

SBA

SOP 80 05 5

Standard Operating Procedure for the Office of Business Development

Office of Business Development

U.S. Small Business Administration

**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

SUBJECT: 8(a) Business Development Program	S.O.P.		REV
	SECTION	NO.	
	80	05	5

INTRODUCTION

1. **Purpose:** The Office of Business Development has undertaken a huge step towards streamlining its processes to reduce the burden to current participants and applicants of the 8(a) BD Program. This SOP update includes the provision of our March 2011 regulatory change as well as provides consistency and uniformity to the Program day to day function. This SOP has been updated in light of regulatory and policy changes and GAO and OIG recommendations. The SOP will provide program clarity and a consistent level of service to program applicants, 8(a) BD Program participants, and the small businesses in the nation who shall continue to benefit as SBA fulfills its mission in their development and support.
2. **Background:** Beginning in late 2014, BD conducted a thorough and intense review of our business functions and processes with a goal of making the Program more available to socially and disadvantaged firms, reducing the burden of both the application and annually review processes while mitigating fraud, waste and abuse. We have included the provisions of our March 2011 regulatory changes in the SOP. This updated SOP will ultimately benefit program participants providing more time for field offices to market, assist, and participate in functions with our resource partners.
3. **Personnel:** SBA employees who work with the 8(a) Business Development Program, both at Headquarters and in the Field.
4. **Directives:** Canceled: SOP 80 05 3
5. **Originator:** Office of Business Development

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CHAPTER 1: OVERVIEW OF THE 8(a) BUSINESS DEVELOPMENT PROGRAM

1. What Is the Mission and Who Provides Assistance?

- a. The mission of the 8(a) Business Development Program (8(a) BD program) is to provide participating businesses with managerial, technical, and procurement assistance to assist them in achieving their full competitive potential.
- b. The 8(a) BD program provides a logical, systematic approach to federal market access and enterprise growth to businesses owned and controlled by socially and economically disadvantaged individuals and entities.
- c. Program participation takes place over a nine year period. During the nine-year period, SBA annually monitors and measures the participant firm's progress achieving its defined targets, goals, and objectives outlined in its approved business plan.
- d. The program provides business development assistance in several forms. For procurement assistance, the program facilitates the award of sole-source and limited-competition contracts. The program provides the following management and technical assistance to Program Participants:
 - (1) Specialized training;
 - (2) Individual counseling assistance; and
 - (3) High-level executive development support.
- e. Management and technical assistance is provided to, and coordinated with, Program Participants by SBA's District Office (DO) staff and other resource partners including, but not limited to, Small Business Development Centers (SBDCs), the SCORE, national trade and professional associations, and state and local service providers.
- f. The intent of the procurement, management and technical assistance is to enable firms to compete successfully in the open market, upon completion of the program, without further program assistance.

2. Under What Authority Does the 8(a) BD Program Operate?

- a. The statutory authority for the 8(a) BD program is contained in §§ 7(j), 8(a) and 8(d) of the Small Business Act of 1953, as amended. To see the specific

provisions contained in the relevant sections of the Small Business Act, see <https://www.sba.gov/content/small-business-act>.

- b. Regulatory authority, based on statutory authority, is found in Title 13, Code of Federal Regulations (CFR), Parts 105, 121, and 124.
- c. This Standard Operating Procedure (SOP) interprets both the statute and regulations to assist SBA staff in providing the services of the 8(a) BD program.
- d. In resolving any programmatic issue, the following order of precedence applies:
 - (1) Statute;
 - (2) Regulations;
 - (3) Decisions of the Administrative Law Judge in the Office of Hearings and Appeals; and
 - (4) SOP.

3. What Is the Purpose of this SOP?

- a. This SOP provides internal policy and procedural guidance for SBA employees to use in performing their official duties.
- b. This SOP also delineates the responsibilities of Headquarters (HQ) components and field offices in implementing the 8(a) BD program.

4. Can Provisions of this SOP Be Waived?

The Administrator is the only SBA official authorized to waive the requirements of this SOP.

- a. A DD may request waiver of the provisions based on a specific circumstance.
- b. The request must be in writing, addressed to the Associate Administrator for Business Development (AA/BD):
 - (1) The DD may forward the request by email, facsimile (fax), or mail to HQ to the AA/BD.
 - (2) The SOP waiver request must be specific, citing the provisions of the SOP to be waived, and provide a detailed justification for the waiver.
 - (3) The Office of Business Development HQ will acknowledge the request within two working days of receipt.

- (4) If the AA/BD agrees with the DD that this SOP should be waived based on the circumstances presented, the AA/BD will forward the request to the Administrator.
- (5) If the AA/BD does not agree with the DD that a particular requirement in this SOP should be waived, the AA/BD has authority to advise the DD that the request for a waiver of a particular requirement of the SOP is denied.

5. How Is the Office of Business Development Structured?

The Office of Business Development (BD) consists of these offices:

- a. Office of Certification and Eligibility (OCE);
- b. Office of Management and Technical Assistance (OMTA); and
- c. Office of Program Review (OPR).

6. What Are the Primary Responsibilities of BD?

- a. BD is responsible for the provisioning of services available through the 8(a) BD program and all other services and activities authorized under §§ 8(a), 8(d), and 7(j) of the Small Business Act;
- b. Issuing program policy and plans;
- c. Coordinating and planning with other SBA offices to insure program integration with other Agency programs;
- d. Coordinating appeals;
- e. Evaluating program implementation;
- f. Rendering final decisions on:
 - (1) Program eligibility;
 - (2) Participant changes in ownership, business structure, business name and management.
- g. Making recommendations on the approval of mentor/protégé agreements;
- h. Evaluating competition waivers above and below the competitive thresholds set forth in 13 CFR § 124.506;
- i. Release of requirements from the program.

7. What Are the General Responsibilities of OCE?

OCE supports BD by providing recommendations of Program Participants of initial and continuing program eligibility. OCE's functions include, but are not limited to, the following:

- a. Analyzing and processing applications for initial program participation;
- b. Analyzing and processing requests for reconsideration of decisions declining initial program applications;
- c. Processing requests to early graduate, terminate, voluntarily withdraw or suspend 8(a) Participants;
- d. Analyzing and processing changes of ownership, business structure, business name and management;
- e. Analyzing and processing annual continuing eligibility reviews for all participants;
- f. Handling general questions on the eligibility processes and application processes;
- g. Providing technical assistance and support to DOs regarding outreach to potential Program Participants and regarding continuing eligibility issues; and
- h. Processing waivers for outside employment.

8. What Are the General Responsibilities of OMTA?

OMTA administers most of the services and 7(j) contracts provided to 8(a) Participants that are not provided by the DOs and also reviews certain actions recommended by DOs. These services include:

- a. Servicing sole-source, competitive, and multiple-award contracts;
- b. Analyzing and processing:
 - (1) Termination waivers;
 - (2) Requests for competition below the competitive thresholds and requests for sole source above the thresholds;
 - (3) Requests for waivers of sole source prohibition; and
 - (4) Bona fide office determinations.
- c. Analyzing and processing mentor/protégé applications and reconsiderations as reviewed by DOs;

- d. Subcontracting assistance;
- e. Overseeing and coordinating 7(j) technical and management training assistance for all participants, including technical evaluation of unsolicited and/or solicited proposals;
- f. Overseeing and executing national and local seminars, conferences, and other similar activities;
- g. Reaching out to prime contractors, federal agencies, and the 8(a) BD program community;
- h. Reciprocating with other certification entities; and
- i. Promoting, training, and assisting the DOs with their overall program objectives and initiatives.

9. What Are the General Responsibilities of OPR?

OPR is responsible for a variety of functions supporting both the offices within the BD and field office staff administering the program. This includes:

- a. Evaluating and responding to external reviews of the program that may be conducted by the SBA Office of Inspector General (OIG), SBA Office of Government Contracting (for agency surveillance reviews), SBA Office of Field Operations (for SBA DO reviews), and the US Government Accountability Office (GAO);
- b. Responding to agency controlled correspondence from the public and congressional offices, FOIA requests from the public, and clearance requests from other SBA offices;
- c. Gaining approval of agency Partnership Agreements and providing training to buying activities;
- d. Creating marketing products and updating the 8(a) BD program web page;
- e. Managing all activities associated with the surplus property program;
- f. Maintaining program data on firm participation; and
- g. Preparing the annual report to Congress on program participation and contracting.

10. What Are the District Office Responsibilities for the 8(a) BD Program?

Each DO is responsible for implementation of 8(a) BD program activities within the geographical area serviced by the office. The DOs:

- a. Develop and implement marketing plans that promote the program by addressing the community of potential 8(a) BD program Participants, the local acquisition community, and the local community of management and technical assistance service providers;
- b. Provide ongoing management and technical assistance to Participants through the use of internal resources and coordination of assistance provided by resource partners to include training addressing business management, opportunity areas, and contract administration;
- c. Identify contract opportunities and accept requirements into the program (*see* Chapter 4A: Contacts – General Processing Requirements);
- d. Match sole source awards with eligible Participants, make suitability determinations on competitive contract awards, and execute and administer 8(a) BD program contracts not awarded directly by procuring agencies with delegated 8(a) BD program contracting authority;
- e. Process waivers (e.g., waivers for highest compensation, outside employment, sole source restrictions, competition below the competitive threshold, sole source above the competitive threshold, and contract termination);
- f. Conduct annual reviews of Participants' accomplishments and compare accomplishments against business plan objectives;
- g. Determine whether Participants are in compliance with program requirements;
- h. Recommend program termination, early graduation, or suspension, as appropriate;
- i. Recommend action on changes of ownership, business structure, business name and management, change of Primary NAICS Code;
- j. Recommend action on mentor/protégé agreements (requests, changes, and renewals);
- k. Review management and Joint Venture (JV) Agreements, rendering final determinations for joint ventures to perform 8(a) contracts;
- l. Conduct field visits for business development and site visits for compliance (*see* Chapter 3: Servicing the Participant); and

- m. Obtain required documentation from Participants on a timely basis for submission to both DO and HQ offices and staff.

11. LIST OF ACRONYMS

Acronym	Definition
A/E	Architectural and Engineering
AA/BD	Associate Administrator for Business Development
ANC	Alaska Native Corporation
ANCSA	Alaska Native Claims Settlement Act
BAT	Business Activity Target
BD	Office of Business Development
BOS	Business Opportunity Specialist
CDC	Community Development Corporation
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CMR	Commercial Market Representative
COC	Certificate of Competency
CODS	Central Office Duty Station –
CPA	Certified Public Account
DD	District Director
DDD	Deputy District Director
DFSC	Defense Fuel Supply Center

DO	District Office
D/OCE	Director for the Office of Certification and Eligibility
D/OMTA	Director/Office of Management and Technical Assistance
D/OPR	Director/Office of Program Review
DSBS	Dynamic Small Business Search
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System
GAO	General Accounting Office - GAO
GC	Government Contracting
GSA	General Services Administration
HQ	Headquarters
HUBZone	History Underutilized Business Zone
IRS	Internal Revenue Service
JV	Joint Venture
LBOS	Lead/Supervisory Business Opportunity Specialist
LLC	Limited Liability Corporation
NAICS	North American Industry Classification System
NHO	Native Hawaiian Organization
OCE	Office Certification and Eligibility

OMTA	Office of Management and Technical Assistance
OHA	Office of Hearing and Appeals
OIG	Office of the Inspector General
OPR	Office of Program Review
PCR	Procurement Center Representative
RFP	Request for Proposal
SAM	System for Award Management
SASP	State Agency for Surplus Property
SBA	Small Business Administration
SBDC	Small Business Development Centers
SBIR	Small Business Innovative Research
SCORE	Formerly the “Service Corps of Retired Executives,” now known simply as SCORE
SDB	Small Disadvantaged Business – done
SOP	Standard Operating Procedures
SOW	Statement of Work
T4C	Termination for Cause
T4D	Termination for Default

CHAPTER 2A: PREPARING AND SUBMITTING APPLICATIONS

1. What are the Contents of this Subchapter?

Subchapter 2A covers the preparation and submission of applications from businesses seeking to obtain certification for participation in the 8(a) BD program.

2. How Does the DO Respond to an Individual Who Requests Information About the 8(a) BD Program?

The DO will encourage potential 8(a) BD program applicants to attend an information session to obtain information regarding the program and its eligibility criteria prior to filing an application. The DO can also refer the applicant to SBA's website for forms, specific eligibility criteria, pertinent regulatory sections in the Code of Federal Regulations, and overall information on the program.

3. What Is the Information Session/Workshop?

The information session is a meeting between potential 8(a) BD program applicants and SBA staff and/or resource partners. This session may take the form of a group workshop involving several potential applicants or it may be a one-on-one interview with a single potential applicant.

4. What Is the Purpose of the Information Session?

- a. The purpose of the information session is to provide potential applicants with information about the 8(a) BD program, including eligibility and the application process.
- b. After attending a session, a potential applicant should be able to determine if participation in the program is a good idea for his or her business.
- c. Further, a potential applicant should be able to look at the disadvantaged status, management capability, and financial and operating capacity of his or her firm and reasonably assess whether or not the firm is eligible for the 8(a) BD program.
- d. Participation in this session is not mandatory to apply to the 8(a) BD program.

5. Who Conducts the Information Session?

SBA staff or resource partners designated by the DO, such as SCORE SBDCs, conduct the information session, whether in the form of a workshop or an interview.

6. What Topics Are Covered in the Information Session/Workshop?

The following topics are covered in the information session or workshop:

- a. The basic philosophy of the 8(a) BD program, including appropriate statutory and policy requirements;
- b. Eligibility requirements, including social disadvantage, economic disadvantage, U.S. citizenship, ownership, control, size, good character, and potential for success;
- c. Application forms (including a discussion of the penalties under federal law for false statements in the certification process and a recommendation for the applicant to keep copies of all application documents submitted);
- d. The requirement for submission of financial statements and tax returns filed with Internal Revenue Service (IRS);
- e. Representation (it should be made clear in the session that it is not necessary to retain representation to assist in the preparation and submission of SBA applications and that representation has no influence on the application process);
- f. General requirements for program participation, such as annual reviews and continuing eligibility requirements;
- g. The availability of SBA management and financial assistance and outside resources for program participants; and
- h. The types of documents that may be required to support values associated with personal and business assets and liabilities (e.g., real estate holdings, bank accounts, investments, retirement accounts, mortgages, personal loans, contract awards, etc.).

7. Who Is Responsible for the Preparation of an 8(a) BD Application?

- a. The applicant is responsible for completing an application package.
- b. Prior to application, potential applicants may seek information from their local DO staff, including the BOSs in that office.
- c. If the applicant needs in-depth assistance, SBA may refer the applicant to an appropriate resource partner.
- d. Headquarters BD staff can provide training to DOs and SBA Resource Partners on the application process, upon request

8. Who Screens and Processes the 8(a) Application?

- a. For all applicants, the BOS in OCE's San Francisco or Philadelphia Central Office Duty Station (CODS), serving the territory where the applicant's principal place of business is located, screens and processes the application.
- b. For applicants owned by Alaska Native Corporations (ANCs), the San Francisco CODS screens and processes all applications submitted by ANCs regardless of where the concern is located.
- c. The BOS in the CODS assigned to the application is responsible for answering the applicant's questions and providing information, as needed.
- d. The applicant concern must forward its application to the appropriate CODS. See Appendix 2A for map showing where applications are processed.
- e. Upon receipt of an application, the CODS must indicate the date of receipt and immediately enter pertinent information (e.g., signature page received, etc.) into the electronic application tracking system

9. What Information May Be Disclosed to an Individual Regarding His or Her Application?

- a. SBA staff may discuss the different stages of processing and will remind the applicant that the AA/BD makes the final decision to approve or decline an application.
- b. The CODS staff may advise an applicant about the stage of processing of an application. The CODS staff is encouraged to seek further clarifications and communicate with the applicant regarding issues that may be easily resolved.

10. Who May Request Information Regarding the Status of the Application?

- a. Only an authorized representative listed on the application as an owner, officer director, or consultant may request information regarding an application's status.
- b. Additionally, SBA and SBA OIG personnel are entitled to information regarding an applicant, where applicable.

11. What Are the Required Forms That a Firm Must Submit?

Each Applicant Firm must submit the SBA Form 1010, 8(a) Business Development (BD) Program Application with supporting documentation.

12. What Are the Required Forms That an Individual Must Submit?

Certain individuals associated with the applicant firm must submit the following documents:

- a. SBA Form 1010-IND, Individual Information. Each individual upon whom eligibility is based must submit this form including:
 - (1) All individuals claiming disadvantaged status;
 - (2) Each person owning 10 percent or more of the applicant firm;
 - (3) Each director;
 - (4) Each managing member;
 - (5) Each managing partner;
 - (6) Each limited partner who owns 10 percent or more; and
 - (7) Each officer.
- b. SBA Form 912, Statement of Personal History. Each individual upon whom eligibility is based must submit this form. Required individuals include:
 - (1) All individuals claiming disadvantaged status;
 - (2) Each person owning 10 percent or more of the applicant firm;
 - (3) Each director;
 - (4) Each managing member;
 - (5) Each managing partner;
 - (6) Each limited partner who owns 10 percent or more;
 - (7) Each officer; and
 - (8) Any other individual SBA requires, including key employees and individuals who have the authority to speak for and/or commit the firm.
- c. FD 258, Fingerprint Card. Any individual who responds 'Yes' to questions 7, 8 or 9 on the SBA Form 912 must submit a completed SBA Fingerprint Card. The card cannot have holes, staples, or additional markings, and must be completed in black ink.
- d. SBA Form 413, Personal Financial Statement. Each individual claiming disadvantaged status must submit this form. Additionally, the spouse of each individual claiming disadvantaged status must submit a separate Form 413.

- (1) Must include all assets owned by the individual, including any ownership interest in the applicant concern, personal assets, real property assets including the value of his or her residence.
- (2) Married individuals must provide separate financial statements showing the value of each spouse's personal assets and liabilities (see 13 CFR § 124.104).
- (3) SBA will consider a spouse's financial situation in determining an individual's access to credit and capital where the spouse has a role in the business (e.g., an officer, employee or director) or has lent money to, provided credit support to, or guaranteed a loan of the business.
- (4) For jointly held assets in which the ownership is held equally by both spouses, one half the value of the asset should be listed on each form.
- (5) For other shared assets, the value of the percentage of ownership held by each individual should be listed on that person's form.
- (6) Property that is not community property must be shown on the SBA Form 413 as the separate property of the owning spouse.

13. What Business Organization Information Do Applicant Firms Need to Submit?

All applicant firms need to submit appropriate business organization information, as follows:

- a. Corporations must submit:
 - (1) Articles of Incorporation, including the initial and current, if applicable, version filed with the state;
 - (2) The most current version of applicant firm's Bylaws;
 - (3) Shareholders' meeting minutes showing the election of the corporation's current Directors in accordance with the firm's Bylaws;
 - (4) Minutes of Board of Directors' meetings showing the election of the firm's current officers;
 - (5) The stock register;
 - (6) Any stock transfer agreements;
 - (7) Any stock option plans;
 - (8) Any buy/sell agreements;
 - (9) Any voting agreements; and

- (10) A current certificate of good standing from the state of incorporation.
- b. Limited Liability Companies must submit:
 - (1) Articles of Organization, initial and current, if applicable;
 - (2) The most current version of the Operating Agreement, if applicable (if the applicant is established in a state where Limited Liability Companies (LLCs) have a limited life, the Operating Agreement must state that the duration of the existence of the LLC is at least nine (9) years);
 - (3) Any buy/sell agreements;
 - (4) Any voting agreements; and
 - (5) A current certificate of good standing from the state of organization.
- c. Sole Proprietorships. If operating under an assumed or fictitious business name (i.e., a name other than the legal name of the individual), the Sole Proprietorship must provide copies of the Assumed Name Certificate, Fictitious Business Name Statement, or DBA filings, as filed with the county and/or state.
- d. Partnerships must submit:
 - (1) The most current Partnership Agreement;
 - (2) Any buy/sell agreements;
 - (3) Any voting agreements.

14. What Additional Business Documents Must an Applicant Submit?

- a. Federal Income Tax Returns:
 - (1) Firm must provide copy (ies) of the IRS-filed returns for the three most recently completed fiscal years preceding the date of application (see 121.104 on calculating size).
 - (2) All attachments, forms, statements, and schedules must be included in the copy of the IRS filed returns.
 - (3) For a sole-proprietorship, the owner must submit copies of Schedule C from the personal tax returns for the three years preceding the date of application (single member LLC's may or may not have Schedule C's).
- b. Outstanding Tax Liability, Tax Lien, Judgment or Lawsuit. If any tax return submitted, third party reports, or tax transcripts reflects a federal tax liability (payment due), the taxpayer must provide SBA with copies of cancelled checks

for full payment of the tax liability or a copy of a repayment plan signed by IRS along with evidence that all payments under the plan are current.

- c. Business Financial Statements:
 - (1) The applicant must submit interim or year-end balance sheet, statement of cash flows and profit and loss statement no older than 30 days from the application date.
 - (2) Extraordinary items must be explained. The last Fiscal Year financial statements should be provided IF the firm filed a tax extension request for that FY and has not yet filed taxes.
- d. Banking Information. Copies of the current business loans and lines of credit.
- e. Signature Cards. Copies of signature cards for all business bank accounts or a letter from the bank indicating who has signature authority and how many signatures are required to transact business as well as any limitations placed on the account.
- f. Bonding, Construction Information. For construction firms and engineering firms, a statement of the single and aggregate bonding limit from the firm's surety, if applicable
- g. Business Licenses. Copies of any licenses required to conduct business, including state and local business licenses (as required by law) and other special licenses, such as Contractor, CPA, professional engineer, etc.
- h. Signature Page. Applicant is to provide a signed signature page.
- i. Affiliate Firms. Any necessary information regarding potential affiliates to determine size such as tax returns showing the affiliate's receipts for the past three complete fiscal years and/or the numbers of employees on the most recent company payroll records for the 12 months prior to submitting the application
- j. Proof of US Citizenship. If an individual claiming disadvantaged status is a foreign born national, evidence of U.S. citizenship, such as a U.S. passport or naturalization papers.
- k. Trust Documents. Any applicant owned by a trust must submit a copy of the trust agreement. The trust agreement must specify whether or not the trust is revocable and identify the grantor(s), trustee(s), and current beneficiary (ies). The agreement should include all schedules and exhibits, including a list of all assets held in trust. A BOS may request a review by OGC of the Trust Agreement.

- l. Contract List. A list/chart of current and past Federal and non-Federal contracts within the most recently completed fiscal year. The list/chart should include award date, agency/customer name, NAICS code, a description of work, and dollar value.
- m. Management, Consulting, and JV agreements. Copies of all management, consulting, teaming and Joint Venture agreements.
- n. Distributorship, Licensing, or Franchise Agreements. Copies of all distributorship, licensing or franchise agreements.
- o. Transmutation Agreements. A transmutation agreement, when necessary, if the disadvantaged individual is married and resides in a community property state or territory.

15. What Documents Must the Individuals Claiming Disadvantaged Status Submit?

- a. Federal Income Tax Returns:
 - (1) Each individual(s) claiming disadvantaged status, and his or her spouse(s), must submit the last three years of filed tax returns prior to application submission with all W-2 forms, schedules, other forms, and attachments;
 - (2) If the individual(s) claiming disadvantaged status is married and filing separate returns, his or her spouse must also submit the filed tax returns for the same period.
- b. Resume:
 - (1) Each individual claiming disadvantaged status, and day-to-day managers of entity owned firms;
 - (2) The personal resume must indicate education, technical training, and business and employment experience with the employer's name, dates of employment, job title and duties for each position.
- c. Social Disadvantage. If the individual claiming social disadvantage status is not a member of a group presumed by SBA to be socially disadvantaged they must provide, a narrative statement of social disadvantage. The statement must demonstrate social disadvantage by a preponderance of evidence. *See* 13 CFR § 124.103(c).
- d. Federal Employee Involvement:
 - (1) If any of the individuals (or member of their household) listed below is an employee of the federal government holding a position equivalent to or

greater than GS-13, that individual must submit a letter of no objection from his or her federal agency employer. *See* 13 CFR § 105.301(a).

- (2) Each individual claiming disadvantaged status, officers, directors, and stockholder/owner holding 10% or more;
- (3) NOTE: See FAR 3.601. Except as specified in FAR 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

16. What Must a Firm Seeking a Waiver Request Submit?

Firms seeking a waiver of the requirement that a firm be in business for 2 years in order to establish potential for success must provide information on contracts in progress and completed (including letters of reference or past performance reports to establish successful contract performance) and any information demonstrating performance of work in the industry for which the applicant seeks 8(a) certification.

17. What Documentation Must Entity Owned Firms Submit as Part of Their Application for Participation in the 8(a) BD Program?

Concerns owned by Indian Tribes, ANCs, NHOs, and CDCs must submit the same information as other concerns in order to establish program eligibility, with certain exceptions outlined below. Further, in several instances, concerns owned by these special entities must submit additional information.

- a. Exceptions to Documentation Submission:
 - (1) Social Disadvantage – An Indian Tribe, ANC, NHO, or CDC is itself considered socially disadvantaged and firms at least 51 percent owned by them do not have to submit documentation on social disadvantage. Individuals responsible for the management and control of the firms do not have to establish individual social disadvantage.
 - (2) Economic Disadvantage.
 - (a) ANCs. When an ANC shows majority ownership by Alaska Natives and descendants of Natives and that majority ownership is of both the

total equity of the ANC and the total voting powers to elect directors of the ANC through their holdings of settlement common stock, then the ANC is also deemed economically disadvantaged and need not further establish economic disadvantage for its firms or the ANC itself. *See* 13 CFR § 124.109(a).

- (b) Indian Tribes. Indian Tribes themselves must submit documentation of economic disadvantage as detailed in 13 CFR § 124.109(b) (2). Concerns owned by economically disadvantaged Indian Tribes are considered economically disadvantaged. Once an Indian Tribe establishes that it is economically disadvantaged in connection with the application for one Tribally-owned firm, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) BD program participation, unless specifically requested to do so by the AA/BD.
 - (c) NHOs. An NHO itself must submit documentation of economic disadvantage as detailed in 13 CFR § 124.110(c). Concerns owned by economically disadvantaged NHO are considered economically disadvantaged. Once an NHO establishes that it is economically disadvantaged in connection with the application for one NHO-owned firm, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) BD program participation, unless specifically requested to do so by the AA/BD. If a different NHO identifies that it will serve and benefit the same Native Hawaiian community as an NHO that has already established its economic disadvantage status, that NHO need not establish its economic disadvantage status in connection with an 8(a) BD application of a business concern that it owns, unless specifically requested to do so by the AA/BD.
 - (d) CDCs. Concerns owned at least 51 percent by an eligible CDC (or a wholly-owned subsidiary of a CDC) are presumed to be economically disadvantaged. No additional documentation of economic disadvantage is required. *See* 13 CFR § 124.111(a).
- b. Additional Information ANCs must provide:
- (1) SBA Form 1010-ANC, 8(a) Business Development (BD) Program Application, Alaskan Native Corporation Information. All firms owned by ANCs seeking certification must submit this form.

- (2) The concern's officers, directors, and all shareholders owning an interest of 20 percent or more must submit a completed SBA Form 912, Statement of Personal History. *See* 13 CFR § 124.109(c) (7) (ii).
- c. Additional Information Indian Tribes must provide:
- (1) SBA Form 1010-AIT, 8(a) Business Development (BD) Program Application, Indian-Tribally Owned Concern. All firms owned by American Indian Tribes seeking certification must submit this form.
 - (2) An Indian Tribe must submit all governing documents such as its constitution or business charter.
 - (3) An Indian Tribe must submit evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or its state of residence.
 - (4) The concern owned by an Indian Tribe must have a "sue and be sued" clause in its Articles of Incorporation, Articles of Organization, or Partnership Agreement. For additional guidance on "sue and be sued," please see Chapter 2D – Determining Individual and Business Eligibility.
 - (5) The concern's officers, directors, and all shareholders owning an interest of 20 percent or more must submit a completed SBA Form 912, Statement of Personal History. *See* 13 CFR § 124.109(c) (7) (ii).
 - (6) Indian Tribes may manage and control the firm(s) owned by them through one or more Tribal or non-Tribal members. If firm is managed by non-Tribal members, SBA requires a written management development plan which shows how Tribal members will develop managerial skills sufficient to manage the concern or similar Tribally-owned concerns in the future. *See* 13 CFR § 124.109(c)(4).
- d. Additional Information NHOs must provide:
- (1) SBA Form 1010-NHO, 8(a) Business Development (BD) Program Application, Native Hawaiian Organization Information. All firms owned by NHOs seeking certification must submit this form.
 - (2) A completed SBA Form 912, Statement of Personal History must be submitted by all individuals owning 10 percent or more of the applicant firm, all officers, directors, managing partners, managing members, key employees, day-to-day managers, and any individual who has authority to speak for and commit the concern including those individuals who have

signature authority over the firm's business bank account. *See* 13 CFR § 124.108(a).

- e. Additional Information CDCs must provide:
- (1) SBA Form 1010- CDC, 8(a) Business Development (BD) Program Application, Community Development Corporation Information. All firms owned by CDCs seeking certification must submit this form.
 - (2) CDCs must provide evidence that they have received financial assistance under 42 USC § 9805, *et seq.*
 - (3) A completed SBA Form 912, Statement of Personal History must be submitted by all individuals owning 10 percent or more of the applicant firm, all officers, directors, managing partners, managing members, key employees, day-to-day managers, and any individual who has authority to speak for and commit the concern including those individuals who have signature authority over the firm's business bank account. *See* 13 CFR § 124.111(g).

18. How do Entity Owned Firms Demonstrate Potential for Success?

An applicant firm owned by an Indian Tribe, ANC, NHO, or CDC must demonstrate potential for success and possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. Potential for success for an applicant firm owned by any of these entities can be established one of three different ways:

- a. It has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification; or
- b. The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant has adequate capital to sustain its operations and carry out its business plan as a Participant; or
- c. The Tribe, the ANC, the NHO, or the CDC itself has made a firm written commitment to support the operations of the applicant concern and it has the financial ability to do so.

- d. NOTE: Despite these special rules for satisfying potential for success, the terms of 13 CFR §§ 124.107(e) and (f) governing requisite licensing and buy support also apply to entity-owned firms.

19. Are Entity-Owned Firms Permitted to Own Other Firms?

An Indian Tribe, ANC, NHO, or CDC may not own 51 percent or more of another firm which, either at the time of application or within the previous two years, operates or operated in the 8(a) BD program under the same primary NAICS code as the applicant.

Chapter 2B: APPLICATION PROCESSING - 8(a) APPLICATION SCREENING

1. What Is the Purpose of the Screening Process?

Applications for participation in 8(a) BD Program undergo a screening process so that SBA can identify any deficiencies or matters that may need further explanation. This process is necessary in order to ensure that applications are complete and ready for eligibility review (processing).

2. Who Is Responsible for Screening Applications?

- a. For all applicants, a BOS in the OCE San Francisco and Philadelphia CODS serving the territory where the applicant's principal place of business is located screens the application.
- b. The San Francisco CODS reviews all applications by ANC-owned concerns for completeness, regardless of where the concern is located.

3. How Long Does SBA Have to Screen an Application?

- a. The SBA has 15 calendar days to screen an application for completeness. This begins to run as soon as the CODS receives the application.
- b. Upon receipt, the CODS must date-stamp it to indicate the date of receipt and immediately enter pertinent information into the internal electronic processing system.
- c. Screening includes the BOS verifying that the applicant has completed all the required forms, enclosed all required documents, and explained any issues of eligibility or any discrepancies that require clarification.

4. What Must the CODS Do If an Application Is Significantly Incomplete?

- a. If the BOS determines that the application is significantly incomplete and should be returned to applicant, the BOS shall discuss the rationale for returning the application with the Chief. The Chief will agree or disagree and will work with the BOS to determine next steps.
- b. If the Chief agrees, the BOS will return the entire application package along with all copies. The BOS will include a letter outlining the missing information or deficiencies and will notify the applicant that the SBA does not process incomplete applications. The returned application package, all copies, and the letter must be sent via a delivery method that tracks delivery and provides return receipt capability. The BOS will forward a copy of the letter to the DO that

services the firm's geographic area. The applicant may resubmit a new application at any time.

- c. If the Chief disagrees and does not consider the missing information substantial enough to return the application, the BOS will send a 15 day deficiency letter to the applicant to request additional information.
- d. If an applicant firm resubmits another incomplete application within a year of the SBA's return of their application, the BOS will send a 15 day deficiency letter. If the BOS determines that the application is still significantly incomplete after the 15 days and should be returned to applicant firm, the BOS will provide the Chief with the rationale for why the application should be returned. The Chief will either agree or disagree and work with the BOS to determine next steps.
- e. If the Chief agrees, the BOS will return the entire application package along with all copies. The BOS will include a letter outlining the missing information or deficiencies and will notify the applicant that the SBA does not continue processing incomplete applications. The returned application package, all copies, and the letter must be sent via a delivery method that tracks delivery and provides return receipt capability. The BOS will forward a copy of the letter to the DO that services the firm's geographic area. The applicant may resubmit a new application at any time.
- f. If the applicant firm submits an application after being returned a second time within a year, the BOS will process the application in any case.
- g. Additional Instructions (when the Chief agrees with returning the application):
 - (1) The BOS will send an EMAIL to the applicant notifying them that their application package will be returned to them. This way the applicant is aware that their application package will be returned to them. The email must include the analyst's contact information for the applicant's use should they have any questions or concerns.
 - (2) If the mailing address is a PO Box, the BOS will call the applicant and advise them that our contracted carrier does not deliver to PO Boxes and verify the mailing address where the file is to be sent. This is to allow the applicant an opportunity to provide a different address.

5. Can the Applicant Decide to Withdraw Its Application?

The applicant may withdraw its application at any time prior to the point when the AA/BD makes his/her decision, even after receiving the deficiency notice. If the applicant decides to withdraw its application, it must inform the CODS BOS of its intent to do so in writing. Upon receipt of the written notice, the CODS BOS must immediately return the entire application package to the applicant firm. The applicant may then resubmit a new application at any time.

6. What Should the CODS Do If the Applicant Fails to Respond to the Screening Deficiency Notice?

If the applicant does not respond to the deficiency notice within 15 calendar days of its receipt, the BOS will get the Chief's concurrence before returning the entire application package to the applicant by a delivery method that tracks delivery and provides return receipt capability. The BOS must attach a cover letter to the file explaining to the applicant why its application has been returned. A copy of the letter will be forwarded to the DO that services the firm's geographic area.

7. What Should the CODS Do If the Applicant Responds to the Screening Deficiency Notice?

If an applicant responds to the deficiency notice, the CODS BOS has 10 calendar days to review the applicant's response to determine if the applicant's response is complete and the application is ready for processing. If the application is incomplete, the CODS BOS will return it to the applicant as long as the Chief concurs that the response is insufficient and the application is still deemed incomplete.

8. What Happens If the CODS Determines the Application Is Still Incomplete after Reviewing the Applicant's Response to the Screening Deficiency Notice?

- a. If the CODS BOS determines that the application remains significantly incomplete after reviewing the applicant's response to the deficiency notice, the BOS will get the Chief's concurrence before returning the entire application package along with all copies to the applicant via a delivery method that tracks delivery and provides return receipt capability.
- b. The CODS BOS will attach a cover letter to the application listing the deficiencies not corrected by the applicant and identifying any matters that require further explanation. A copy of the letter will be forwarded to the DO that services the firm's geographic area.

9. What Happens If the CODS Accepts the Application for Processing?

- a. If the CODS accepts the application, it must immediately notify the applicant by first class mail, email, fax transmission, or via the electronic application system.
- b. The BOS may determine that although the application is **substantially** complete, additional items or clarification may be required. If this has been determined, a letter advising the applicant of what is still required will be sent via a delivery method that tracks delivery and provides return receipt capability and allow the applicant five calendar days to provide the additional material and/or clarification.
- c. Once the CODS accepts an application for processing, the 90 calendar day processing clock begins to run.

10. Does an SBA Form 912 (Statement of Personal History) Suspend the 15 Calendar Day Screening Period or the 90 Calendar Day Processing Period?

- a. The BOS will complete the screening of the application within the standard 15 calendar day timeframe even if the SBA Form 912 indicates an arrest or criminal offense.
- b. If the BOS has credible evidence regarding possible criminal conduct by the applicant or any of its principals, the BOS should request clarification/information from the applicant. The purpose of the referral to the Office of Personnel Security (OPS) is to determine if the applicant poses a risk of fraud, waste, and abuse or other criminal behaviors like embezzlement if given 8(a) certification. The Supervisor must review and will refer to OIG, unless the SBA Form 912 does not indicate behavior which could impact an individual's business integrity.
- c. The referral to the OPS is done after acceptance of the application for processing at which point the 90-day calendar processing clock freezes. The OCE CODS will track the date of transfer of the case to the OPS in the respective tracking system and also track the date of return from OPS.

11. Does the CODS Inform the Applicant that the 90 Day Processing Period Has Been Suspended Due to OIG Review of SBA Form 912?

- a. The CODS will inform the applicant that it has referred the SBA Form 912 to the Office of Personnel Security (OPS) for review and that this referral suspends the 90 calendar day processing clock. During the review, the CODS

may not disclose information regarding the OPS referral and any other action being taken on the application, except for official purposes within the SBA.

- b. The CODS must forward any requests from applicants or their representatives for information concerning actions by the OPS for response. The OPS will respond back to the CODS, who will, in turn, respond back to the firm or representative. The OPS deals directly only with the CODS, and does not deal directly with the firm or the firm's representative.

12. How Does a BOS Review and Screen SBA Form 912?

- a. The BOS will review the original copy of each individual's SBA Form 912 as part of the application screening process. If the applicant has not signed the original or has failed to answer any of the questions, the BOS will notify the applicant of the required corrections.
- b. If an individual has answered "No" to all of the arrest record questions (questions 7-9), no further action is required. The BOS will put the SBA Form 912 in the application file.
- c. When reviewing an individual's statement of personal history for completeness during the screening process, a BOS will verify the following:
 - (1) Have completed forms been provided for all individuals claiming disadvantaged status and also for all officers, directors, partners, members, holders of 10 or more percent ownership interest, managers with authority to speak for and commit the applicant concern, and individuals with signatory authority on the business bank account?
 - (2) Are all blocks completed on the form? Is the form properly initialed?
 - (3) Have all names used and the dates of use been included? Has the birth name been included?
 - (4) If the individual claiming disadvantaged status was born outside the U.S., has verification of U.S. citizenship (i.e., a U.S. passport or Certificate of Naturalization) been provided?
 - (5) Has the individual answered "Yes" to questions 7, 8 or 9? If so, has he or she submitted a completed FD-258 Fingerprint Card? If he or she has not submitted this form, has one been requested? Did he or she provide details of the arrest (i.e., fines paid, jail time, probation served and court disposition papers)?

13. What Does the CODS Do When an SBA Form 912 Indicates That an Individual Has an Arrest Record?

- a. Each individual who indicates that he or she has an arrest record must submit a completed, SBA specific FD-258 Fingerprint Card. NOTE: THIS CARD MUST NOT HAVE HOLES, STAPLES, ADDITIONAL MARKINGS OR ANY ALTERATIONS, AND MUST BE COMPLETED IN BLACK INK.
- b. When fingerprints are required, they must be provided before an applicant can receive SBA assistance. The BOS must tell applicants that it is their responsibility to supply legible fingerprints and direct them to go to local law enforcement agencies for assistance.
- c. After the applicant returns a fingerprint card to the CODS, the BOS will review it for completeness.
- d. The CODS will then forward the SBA Form 912, completed Fingerprint Card, and copies of all documentation pertaining to the incidents related to questions 7, 8 and/or 9 to the Office of Personnel Security (OPS). The OPS then forwards the individual's Fingerprint Card to the FBI for review. The BOS will enter the transfer for OPS review in the electronic tracking system. This entry freezes the 90 day processing clock.
- e. The OPS sends information to the D/OCE or his or her designee when the disclosed criminal history raises a question about the character of the applicant (for example: rape, child molestation, murder, tax evasion, financial fraud, etc.). Otherwise, a clearance memo will be sent by OPS directly to the CODS.
- f. If the OPS's report contains arrests and/or convictions not disclosed by the individual, the CODS must contact the individual and provide him or her with the opportunity to explain the reasons for failing to disclose them since Department of Justice regulations state that a deciding official will not use FBI identification records to disqualify an applicant "until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so." See 28 CFR § 50.12 (b).
- g. If a character evaluation referral is forwarded to the CODS for review and analysis, then a recommendation will be forwarded to the D/OCE for further review.

14. Can the CODS Continue Processing an Application, If It Has Information Indicating That the Applicant May Have Committed a Crime?

- a. If the CODS obtains information from a credible source, or the applicant itself, indicating that the applicant or another party may have been involved in the submission of fraudulent information or other criminal misconduct, CODS must immediately report to the D/OCE for further review and will forward to the SBA OIG, unless the conduct does not indicate a lack of business integrity.
- b. Examples of reportable information includes, but is not limited to, statements on the application or application materials that appears to be false or misleading, documents that appear to have been altered, and a situation where an applicant fails to provide important information, which the applicant has a duty to disclose.
- c. In general, the CODS should continue normal processing of the application unless contacted by an SBA OIG representative requesting suspension of processing in writing. CODS personnel should not attempt to conduct their own investigation, unless the SBA OIG provides consent to do so in writing

15. Does the CODS Obtain a Third Party Report During the Screening Process?

The CODS may obtain third party reports for the applicant firm, as well for individuals claiming disadvantaged status, each person owning 10 percent or more of the applicant firm; each director; each management member; each managing partner; and each officer. Third party reports include but are not limited to credit reports (e.g., Experian) or Lexis Nexis reports.

16. How Does a BOS Review and Screen the SBA Form 1010?

When reviewing the SBA Form 1010 for completeness during the screening process, a BOS will verify the following:

- a. Have all numbered items been completed?
- b. Have all the information fields been completed, such as the date the business was established, the number of employees and DUNS or Dynamic Small Business Search (DSBS) number?
- c. If any questions are marked “Yes,” is the required additional information included with the correct numbered attachment?
- d. Does the primary NAICS code correspond with the firm’s primary revenue area as verified by a review of its tax returns and System for Award Management (SAM) or DSBS profile?

- e. Has the firm been in business in its primary industry for at least 2 years? If not, is each of the waiver conditions addressed? Is the evidence sufficient to enable SBA to fully evaluate each waiver condition or is additional documentation needed? For more detailed procedures on making this determination, please see Chapter 2D – Determining Individual and Business Eligibility.
- f. If the applicant concern is a corporation, have the officers and directors been identified in Section II and does this information correspond with the minutes of the meetings electing individuals to these positions?
- g. If the applicant concern is a partnership, have all general, managing, and limited partners been identified in Section II?
- h. If the applicant concern is a limited liability company, have all members been identified in Section II?
- i. Is Page 8 of the SBA Form 1010 signed by the President, Chief Executive Officer (CEO), proprietor, management member, general partner or sole proprietor?
- j. If the applicant concern is owned through a trust, is that trust revocable and is the disadvantaged individual the grantor, the trustee and the sole current beneficiary?

17. How Does a BOS Review and Screen the SBA Form 1010-IND?

When reviewing SBA Form 1010-IND for completeness during the screening process, a BOS will verify the following:

- a. Have all numbered items been completed?
- b. If any questions are marked “Yes,” is the required additional information included with the correct numbered attachment?
- c. Are all individuals claiming social disadvantage members of a designated group?
- d. If an individual claiming social disadvantage is not a member of a designated group, did he or she identify the basis of social disadvantage?
- e. If the individual claiming social disadvantage is an Alaska Native, does he or she meet the requirements of 13 CFR § 124.3(i.e., is the individual an Alaska Native who is at least one-fourth degree Alaskan Indian, Eskimo, or Aleut blood or a combination of these bloodlines or, in the absence of proof of a minimum blood quantum, is the individual a citizen whom a Native village or Native

group regards as an Alaska Native if their father or mother is regarded as an Alaska Native)?

- f. If the individual claiming social disadvantage is a Native Hawaiian, were his or her ancestors natives, prior to 1778, of the area which now comprises the State of Hawaii? *See* 13 CFR § 124.3. These individuals must submit copies of birth certificates or registration cards from the office of Hawaiian Affairs to verify their Native Hawaiian heritage.
- g. Any individual claiming social disadvantage as Native American must verify their enrollment in a State or Federally recognized tribe. If they are not enrolled members of either a state or Federally recognized tribe, they must establish social disadvantage based upon the preponderance of the evidence.
- h. Are all individuals claiming disadvantaged status U.S. citizens?

18. How Does a BOS Review and Screen the Résumés Submitted Along With an Application?

When reviewing personal résumés for completeness during the screening process, the BOS will review the following:

- a. Are there résumés for each individual claiming disadvantaged status?
- b. For those individuals required to provide personal tax returns, does the employment information on their résumés match their W-2 forms?
- c. Is there a listing of the individual's duties and responsibilities with the applicant concern?
- d. Does someone's résumé reflect that he or she possesses the education and technical expertise needed for this type of business?
- e. Does a disadvantaged individual have the requisite managerial experience?
- f. Is clarification required regarding full time devotion by disadvantaged individuals?
- g. Does negative control exist through a non-disadvantaged individual's technical or managerial expertise? Please refer to 13 CFR § 124.106.
- h. Does the disadvantaged individual's resume demonstrate that he or she has ultimate managerial and supervisory experience to control those who possess the required licenses or technical expertise?

19. How Does a BOS Review and Screen the Current Business Financial Statements?

When reviewing an applicant's current business financial statements for completeness during the screening process, a BOS will verify the following:

- a. Are the statements no older than 90 days from date of receipt of the application by SBA?
- b. Are they for the full performance period (i.e., from the beginning of the calendar or fiscal year to the ending date)?
- c. Are a profit and loss statement and a balance sheet included?
- d. Have the statements been prepared in accordance with generally accepted accounting principles or an accepted accounting basis?
- e. Are the aging schedules for accounts payable and receivable consistent with the accounts payable and receivable amounts on the current balance sheet?
- f. Are any accounts payable or receivable significantly old?
- g. Do the balance sheets balance?
- h. Are current assets recorded properly?
- i. If the applicant concern is a dealer, wholesaler, or supplier, does the firm maintain any inventory?
- j. Does the firm have fixed assets? If so, are these fixed assets recorded properly?
- k. Are the fixed assets reported with depreciation or at actual value?
- l. Do the firm's fixed assets correspond with its type of business? For example, if the firm performs construction work does it have construction equipment?
- m. If there is a partner, shareholder, member, or officer loan, is there a copy of the loan document? Is this loan reflected on the individual's SBA Form 413, Personal Financial Statement as an asset?
- n. Are there loans or notes receivable from a shareholder, officer, member or partner? If so, has a copy of the loan or note been provided?
- o. Does the loan reflect generally accepted repayment terms? If not, is this item over-inflating the firm's assets?
- p. Does the firm have the ability to service debts?
- q. Are there any loans that are questionable or that may raise concerns regarding control?

- r. Does the listed business equity match that reported on the Personal Financial Statements of the owners?
- s. Is the profit and loss statement correctly calculated?
- t. Does the profit and loss statement show revenues in the appropriate business activity?
- u. Is “Cost of Goods Sold” included?
- v. Are the line items properly recorded?
- w. If there is an expense for salaries for employees, are employees listed on SBA Form 1010?
- x. If there is an expense for workmen’s compensation, are employees listed on SBA Form 1010?
- y. Is the disadvantaged individual the firm’s highest compensated individual? If not, has an explanation of the salary structure been provided? Please see Chapter 2D – Determining Individual and Business Eligibility for a list of questions that guide analysis of salary, management and control.
- z. Are there any large subcontracting expenses that appear questionable?
- aa. Does the firm appear to have the necessary equipment, financial resources, working capital, *etc.*, to perform 8(a) contracts it may be awarded?
- bb. Are there questionable items listed on the statements, or have things changed significantly from the previous year end statement?
- cc. Are there indications that excessive withdrawals have occurred?
- dd. Does the firm have financing by non-disadvantaged individual(s) that would be considered critical financing? Also, is the loan payable upon demand?

20. How Does a BOS Review and Screen the Bonding Information?

When reviewing an applicant’s bonding documents for completeness during the screening process, a BOS will verify the following:

- a. If the applicant concern is a construction firm, has it provided bonding information that includes its single-job and aggregate levels?
- b. Is a minimum contractor’s bond required by the state?
- c. Who is the indemnitor or guarantor on the bonding? If it is a non-disadvantaged individual or entity, does this create a potential for negative control?

21. How Does a BOS Review and Screen the Line of Credit Information?

When reviewing information regarding an applicant's line of credit for completeness during the screening process, a BOS will verify the following:

- a. Have copies of all credit line agreements been provided?
- b. Are the agreements complete?
- c. Is the credit line exhausted? If not, how much credit is available?
- d. Are there sufficient lines of credit to finance the firm's operations?
- e. Is there a guarantor on the line of credit? If the guarantor is a non-disadvantaged individual, does this give him/her the power to exercise control over the firm?

22. How Does a BOS Review and Screen the Loan Information?

When reviewing information regarding the loans held by an applicant for completeness during the screening process, a BOS will verify the following:

- a. Have copies of all loans listed on current business financial statements been provided?
- b. Is there a guarantor for any of the loans? If so, is the guarantor a non-disadvantaged individual?
- c. Are the terms of the loan problematic? For example, does the loan agreement contain payable upon demand clauses, short repayment periods, high interest rates, burdensome collateral requirements, *etc.*?
- d. If there are shareholder, member, officer, or partner loans to or from the firm, are these loans reflected on the relevant individuals' Personal Financial Statements?

23. How Does a BOS Review and Screen the Applicant's Tax Returns?

When reviewing the applicant tax returns for completeness during the screening process, a BOS will verify the following:

- a. Does the application include complete, personal Federal tax returns for the three most recently completed years from each person claiming disadvantaged status?
- b. Are any of the applicants who are required to submit personal Federal tax returns married? If so, did they file jointly with their spouses? If they are

married and filed separately, did they also provide copies of their spouses' tax returns?

- c. Do the W-2 forms add up to the reported wages?
- d. Are all schedules, forms, and attachments included?
- e. Do the tax returns verify or contradict a claim of full-time devotion to the business by one or more disadvantaged individuals? For example, does the most recent tax return indicate wages from outside employment or an outside business interest? Or, is there a foreign income tax credit, a "Schedule C" or a "Schedule E" that would call into question a disadvantaged individual's full-time devotion or indicate outside business interests?
- f. If the tax returns indicate that any of the disadvantaged individuals have outside employment or outside business interests, did they submit information reflecting the nature of the outside employment and its anticipated duration?
- g. Do the tax returns show that a disadvantaged individual receives the highest compensation from the firm?

24. How Does a BOS Review and Screen the Firm's Business Tax Returns?

When reviewing the applicant concern's business tax returns for completeness during the screening process, a BOS will verify the following:

- a. Has the applicant concern provided complete copies of its Federal business tax returns for the last three years? (If the firm is a sole proprietorship or single member LLC, has the owner submitted his or her Schedule C for the last three years?)
- b. Have all schedules, forms, and statements been included?
- c. Are there any questionable items on the schedules or statements?
- d. Do the returns indicate that the firm has been operating in its primary industry for at least two years?
- e. Can the wages of disadvantaged owners, officers or partners be verified, if applicable?
- f. Does the ownership percentage information correspond with the ownership percentages on the SBA Form 1010 as well as the stock register/ledger, partnership agreement or operating agreement?

25. How Does a BOS Review and Screen the Bank Signature Card?

When reviewing the applicant concern's bank signature cards for completeness during the screening process, a BOS will verify the following:

- a. Are the cards for the business bank accounts as opposed to personal bank accounts?
- b. Does it reflect the appropriate name, legal structure, EIN number, and address of the applicant concern?
- c. Do the business' financial statements reflect more than one account? If so, have all signature cards been provided?
- d. Does a non-disadvantaged individual have unlimited signing authority?
- e. Do the disadvantaged individuals have unrestricted access to the bank account?
- f. Do signature titles correspond with other information? For example, is disadvantaged Mr. X listed as the President on SBA Form 1010, while the signature card lists Mr. X as the Vice President and non-disadvantaged Ms. Y as the President?
- g. Are there any limitations on signing authority? For example, are two signatures required for anything over a certain dollar level?

26. How Does a BOS Review and Screen the Business Licenses?

When reviewing the applicant concern's business licenses for completeness during the screening process, a BOS will verify the following:

- a. Are copies of all the required licenses provided (e.g., city, county, and state business licenses, etc.)?
- b. Are the licenses specific to the firm's business?
- c. Are licenses provided for all business locations?
- d. Whose name is on the license? If a non-disadvantaged individual holds the license, does a disadvantaged individual have ultimate managerial and supervisory control over the license holder?
- e. Does the business location covered by the license correspond with the address on the SBA Form 1010? If not, is the license non-transferable?
- f. Who is the business owner on the license?
- g. Are the licenses current or expired?

27. How Does a BOS Review and Screen the Special Licenses?

When reviewing the special licenses for completeness during the screening process, a BOS will verify the following:

- a. Is any special licensing required for the industry in which the firm operates, such as a contractor's license, professional certification, or EPA licensing? If so, has this licensing requirement been verified and met?
- b. Have copies of all the required special licenses been provided?
- c. Do the résumés or SBA Form 1010 refer to any licenses that have not been provided?
- d. Who is listed on the license? Who is the qualifier? Are there any concerns regarding potential control by non-disadvantaged individuals?
- e. If the license is not transferable, does it list the appropriate individuals and addresses?
- f. Are the licenses current or expired?
- g. If the firm is in the sales industry, has it provided a copy of its resale license, seller's permit or state sales tax permit? Does this license or permit correspond to the correct location, legal structure, and business activity of the firm?

28. How Does a BOS Review and Screen the Fictitious Business Name Statements for Sole Proprietorships?

When reviewing the fictitious business name statements for completeness during the screening process, a BOS will verify the following:

- a. Was a fictitious name statement filed with the city, county, or state, if appropriate?
- b. Did a disadvantaged individual file the statement?

29. How Does a BOS Review and Screen the Management and Consulting Agreements or Contracts?

When reviewing the management and consulting agreements a firm has entered into for completeness during the screening process, a BOS will verify the following:

- a. Have copies of any agreements been provided?

- b. Do the agreements raise any concerns that need to be addressed? For example, is there an employment agreement involving consultant fees that exceed the amount of compensation paid to the disadvantaged owner?
- c. If a representative or outside consultant prepared the application, has a copy of the consultant's agreement been provided? If so, is the agreement in compliance with the 8(a) requirements regarding payments, fee structure, and contingency fees?

30. How Does a BOS Review and Screen the SBA Form 413, Personal Financial Statement?

When reviewing an individual's SBA Form 413 for completeness during the screening process, a BOS will verify the following:

- a. General:
 - (1) Is the date on the first page of SBA Form 413 within 30 days of SBA's receipt of the application?
 - (2) Is the individual's SBA Form 413 signed and dated and does it include his or her social security number?
 - (3) Are the "Assets" and "Liabilities" columns totaled properly, and is the individual's net worth correctly computed?
 - (4) Are there appropriate corresponding assets and liabilities? For example, if there is a mortgage on real estate listed as a liability, is there a corresponding asset for the real estate?
 - (5) Do the amounts reported in Sections 2 through 8 correspond with the amounts listed in the assets and liabilities columns?
 - (6) If an individual is claiming disadvantaged status, does his or her adjusted net worth exceed \$250,000, or do assets exceed \$4,000,000, while taking into account all required adjustments set forth in 13 CFR § 124.104(c)?
 - (7) Has a completed statement been provided for each individual claiming disadvantaged status? If any of these individuals are married, have they submitted separate forms for their spouses?
 - (8) If the individual filing a SBA Form 413 is married, are his or her assets and liabilities properly divided? Does the division of assets and liabilities correspond with any pre- or postnuptial agreements? Have copies of these agreements been submitted? Section 4 should reflect total values, while

the Real Estate line of the Assets column and the Mortgages on Real Estate line of the Liabilities column should reflect halved values if the property is jointly owned with another individual. In addition, second mortgages should be reflected in Section 4 under the applicable property holding. This will impact the calculation for residential equity.

- (9) If the individual is married and resides in a community property jurisdiction (Arizona, California, Guam, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin), have all of his or her community property assets and liabilities been halved accordingly? Does the division of assets and liabilities correspond with any pre- or postnuptial agreements? Have copies of these agreements been submitted? Has a transmutation agreement, or other acceptable evidence, been provided? NOTE: Per 13 CFR § 124.104(b)(2), “SBA does not take into consideration community property laws when determining economic disadvantage.”

b. Assets:

- (1) Do the cash and savings listed on the statement correspond with the Schedule B interest earnings shown on the individual’s most recent tax return? Cash assets for the applicant firm should not be included on the SBA Form 413. If amounts appear significant, this may be an indication that assets for the business have been co-mingled on the form.
- (2) Does the Schedule B of the individual’s most recent personal tax return reflect dividend income? If so, does the individual’s SBA Form 413 show corresponding investment assets?
- (3) Do personal tax returns contain any reported foreign income credits? Is there a corresponding asset reflected on the individual’s SBA Form 413?
- (4) Is the cash surrender value of the individual’s whole life insurance policy appropriately listed on his or her SBA Form 413? Are all assets properly reported and valued?
- (5) Do any assets appear to be unreported?
- (6) If the applicant concern is a corporation, has the individual’s stock information been listed?
- (7) Does Section 1 reflect all of an individual’s income (rental, wages, 401(k)s, retirement benefits, IRAs, etc.)? Does this amount correspond with what is reported on the individual’s personal tax returns?

- (8) Has the primary residence been properly listed as an asset? Compare the address listed on the most recent personal tax return with the addresses listed in Section 4 to ensure that the applicant has included the primary residence. Is the address listed the same as the address where they claim to reside? If not, a deduction for the equity in the residence may not be applicable.
- (9) Does Section 4 include all of the individual's property holdings and does the amount paid in property taxes shown on tax returns correspond with the value noted for the property? Review Schedule A or E (Since the taxes paid on a rental may be reflected in the Schedule E) of the tax return to verify the amount of real estate taxes paid. This is to ensure that real estate property has not been undervalued.
- (10) If IRS Form 1040, Schedule E reflects rental income, are the rental properties included in Section 4? Conversely, are all rental properties in Section 4 also shown on the most recent IRS Form 1040, Schedule E?
- (11) Does Section 5 include personal assets such as furniture, jewelry, clothing, etc.?
- (12) If the business financial statements or business tax returns reflect a shareholder's, member's, partner's, or officer's loan to the company, is it reported on the relevant individual's SBA Form 413 as a receivable?
- (13) Does the taxable interest recorded on the most recent personal tax return, specifically, the Schedule B, align with the savings and bank holdings reflected on the SBA Form 413? For example, do the amounts noted on the Cash on hand and in Banks and on the Savings Account lines of the SBA Form 413 seem appropriate given the interest income earned at the prevailing interest rate? If the amounts do not appear reasonable, investigation is needed. Did the applicant transfer funds to a third party? Were funds injected into the applicant firm? For verification, copies of bank statements may be requested.
- (14) Do the personal tax returns indicate that the applicant has transferred assets? For instance, if the 2014 tax return, specifically the Schedule E, indicates ownership of a rental property, and the 2015 tax return does not indicate sale of the property, then the asset may have been transferred. An investigation is needed.
- (15) Do the personal tax returns reflect assets, such as stock or rental property, that generate income? The assets on the SBA Form 413 should reconcile

with the tax return. Capital gains are reported on the IRS Form 1040, Schedule D, and income from real estate is noted on the Schedule E. Ensure the assets are reflected accordingly on the SBA Form 413. If the applicant claims real estate has been sold, request a copy of the sale agreement. The sale agreement will provide information regarding the sale proceeds.

- (16) Do the personal tax returns indicate ownership of retirement assets, such as IRA accounts, pension plans, etc.? The BOS should review lines 15a and 16a of the IRS Form 1040 and the IRS Form W-2 to verify ownership of these assets. The IRS Form W-2 may also reflect deferred compensation plans which would indicate some type of retirement program. The IRA and Other Retirement Account line of the SBA Form 413 should indicate the current account balance of the retirement accounts. Obtaining statements may be necessary to verify current account balance of retirement accounts.
 - (17) Does the SBA Form 413 reflect ownership of all outside businesses, either in Section 3 or Section 5, depending on their legal structure? The value of each outside business should also be verified against the business financial statements and business returns. If applicable, the IRS Form 1040 generally indicates ownership of an outside business on the Schedule C (sole-proprietorship or single member Limited Liability Company) or Schedule E (partnership, limited liability company, or S-corporation). However, ownership in a C-corporation will not be reflected on the personal tax returns. Dividends reported on the Schedule B may also indicate ownership in an outside business.
 - (18) If the individual has a trust, are all assets held in trust included in the Assets column?
 - (19) Does the SBA Form 413 include the applicant concern's business equity amount in Section 3 or 5 (depending on the firm's legal structure)?
- c. Liabilities:
- (1) Does the individual have IRS debt or outstanding Federal student loan debts? If so, have IRS approved installment agreements or repayment plans been provided along with evidence of current compliance with the agreement or plan?
 - (2) Does the information listed in the "Notes Payable to Banks and Others" line item equal the "Current Balance" listings in Section 2?

- (3) If an individual has an obligation that is payable to the business, is it listed as debt on his or her SBA Form 413?
- (4) Does the SBA Form 413 reflect debts from banks, finance companies, etc., in Section 2 and/or 7? If large, obtain additional information. What were the funds used for? If applicable, ensure the asset(s) associated with the debt is included on the SBA Form 413.

31. How Does a BOS Review the Partnership Agreement?

When reviewing an applicant concern's Partnership Agreement for completeness during the screening process, a BOS will verify the following:

- a. Was the current partnership agreement provided?
- b. Is a disadvantaged individual listed as the managing partner?
- c. Does the ownership structure comply with the 8(a) criteria?
- d. Does distribution of profits comply with the 8(a) criteria?
- e. Is there anything in the agreement that may affect ownership, control or management, etc.?
- f. When did the partnership begin?
- g. Is the agreement properly signed and dated by the partners?

32. How Does a BOS Review the Articles of Organization?

When reviewing an applicant Limited Liability Company's Articles of Organization for completeness during the screening process, a BOS will verify the following:

- a. Were the original and current articles provided?
- b. Were these articles filed with the state?
- c. Is there a filing stamp or receipt of filing? If not, was evidence of filing with the state submitted?
- d. Do the articles outline management of the firm (e.g., is the firm member-managed or manager-managed)? Does this correspond with the management identified in the operating agreement?

33. How Does a BOS Review the Operating Agreement?

When reviewing a Limited Liability Company's Operating Agreement for completeness during the screening process, a BOS will verify the following:

- a. Was the current Operating Agreement provided?
- b. Is each member and respective ownership interest identified?
- c. Is the firm member-managed or manager-managed? Does this correspond with the management identified in the Articles of Organization?
- d. Is a disadvantaged individual listed as the managing member?
- e. Does the ownership structure comply with the 8(a) criteria?
- f. Does the distribution of profits comply with the 8(a) criteria?
- g. Is there anything in the agreement that affects ownership, control and management, etc.?
- h. When did the Limited Liability Company begin?
- i. Have all members signed the agreement?

34. How Does a BOS Review the Articles of Incorporation?

When reviewing a corporation's Articles of Incorporation for completeness during the screening process, a BOS will verify the following:

- a. Have the original and current articles been provided?
- b. Were these articles filed with the state?
- c. Is there a filing stamp or receipt of filing? If not, was evidence of filing with the state submitted?
- d. Is the number of authorized board members included in the articles?
- e. Is there more than one class of stock (e.g. Preferred/Common, Voting/Nonvoting)?
- f. Is the company name the same or are there any amendments or d.b.a. ("doing business as") filings?

35. How Does a BOS Review the Corporate Bylaws?

When reviewing a corporation's bylaws for completeness during the screening process, a BOS will verify the following:

- a. Are the current bylaws complete?
- b. Are they signed and dated?
- c. Are there any supermajority voting requirements?
- d. Does the structure of the board of directors comply with state law and the Articles of Incorporation? How many directors are authorized? Has the correct number been elected and accounted for?
- e. Do the authorized officer positions correspond with the titles and positions currently filled? For example, is one person the CEO and another the President, despite the fact that the corporate bylaws only authorize the office of President?
- f. Is the distribution of profits in compliance with 8(a) criteria?

36. How Does a BOS Review the Shareholder Meeting Minutes?

When reviewing an applicant corporation's shareholder meeting minutes for completeness during the screening process, a BOS will verify the following:

- a. Have the meeting minutes electing the current board of directors been provided? Was the election of the Board done in accordance with the Bylaws?
- b. Does the board structure comply with the corporate bylaws and Articles of Incorporation?
- c. Are there discussions of loans or business arrangements that cause concerns about control, affiliation, etc.?

37. How Does a BOS Review the Board of Directors Meeting Minutes?

When reviewing a corporation's Board of Directors meeting minutes for completeness during the screening process, a BOS will verify the following:

- a. Have the meeting minutes for the last year been provided?
- b. Do the minutes reflect the election of corporate officers? Is the election of the corporate officers done in accordance with the Bylaws?
- c. Are there any concerns regarding control by non-disadvantaged individuals? For example, did a non-disadvantaged owner hold the office of President within the last year?
- d. Are there any other troubling issues or concerns? For example, is there a discussion in the meeting minutes of a merger, acquisition or JV that is not

presented in the application or any other issue that may cause problems with control or ownership?

- e. Do meeting minutes reflect stock options? If so, has a copy of the stock option plan been provided?
- f. Have any stock options been exercised? Do the disadvantaged individuals still own 51 percent of the firm treating unexercised options held by non-disadvantaged individuals as exercised?

38. How Does a BOS Review the Stock Ledger?

When reviewing a corporation's stock ledger for completeness during the screening process, a BOS will verify the following:

- a. Has a copy of the stock ledger or register been provided?
- b. Does the ledger information correspond with other ownership information in the file (e.g., the SBA Form 1010, corporate tax returns, SBA Form 413, etc.)?
- c. Has majority stock ownership been transferred from a non-disadvantaged individual to a disadvantaged individual within the last two years? If so, did this transfer comply with the 8(a) criteria?
- d. Do disadvantaged individuals own at least 51 percent of the aggregate of all outstanding shares of stock and at least 51 percent of each class of voting stock?

39. How Does a BOS Review the Certificate of Good Standing?

When reviewing a corporation's certificate of good standing for completeness during the screening process, a BOS will verify the following:

- a. Is the certificate current or has it been issued within the most recent year end or fiscal year end filing?
- b. Does the certificate reflect the corporate name?
- c. Was the certificate issued by the state of incorporation?
- d. If the firm operates in more than one state, are there current certificates of good standing and foreign corporation certificates for these other states?

40. How Does a BOS Review the Materials Regarding Size and Affiliation?

When reviewing the size and affiliation data for completeness during the screening process, a BOS will verify the following:

- a. Do any documents in the application file indicate that the firm may have affiliates? If so, has any information been provided on these possible affiliates?
- b. Including affiliates, does the firm's size exceed the size standard corresponding to its primary NAICS code?
- c. Do affiliated firms have an inappropriate amount of control over the applicant?
- d. Does any disadvantaged manager work for an affiliated firm (other than a wholly owned subsidiary of the applicant concern) and does this raise concerns regarding his or her full-time devotion to the applicant concern?
- e. If there are affiliates, has each affiliate provided tax returns for the three most recent fiscal years?

41. How Does a BOS Review the List of Contracts?

When reviewing an applicant concern's list of contracts for completeness during the screening process, a BOS will verify the following:

- a. Does the list include the award date, client name, dollar value, NAICS code and a description of work for each contract?
- b. Are the contract values in line with the revenues reported on the business income statements and tax returns?
- c. Does the applicant concern receive the majority of its contracts from one client?
- d. Does the applicant concern receive a large number of contracts from a former employer, or a current or previous 8(a) Participant?
- e. Do the descriptions of work demonstrate that the firm has accurately represented its primary NAICS code?

42. What Other Information Must the BOS Review?

When reviewing an application package during the screening process, a BOS will make the following additional inquiries:

- a. Have there been any personal or business bankruptcies? If so, has information on the current status of this bankruptcy been provided (including bankruptcy discharge documentation)?
- b. Does the firm or any of its principals have Federal, state, or county tax liens against them? If so, has all necessary information been provided regarding these liens? How significant are the liens?

- c. If a disadvantaged owner is married and resides in a community property jurisdiction, has he or she provided a transfer of community property interest agreement? Does it transfer a sufficient percentage in the applicant concern to allow for at least 51 percent unconditional ownership by the disadvantaged individuals?
- d. Is the applicant concern a franchise? If so, has a copy of the franchise agreement, franchise offering circular, and most recent statement of material change or no material change been provided? Is there undue control of the applicant by the franchisor? Is the franchise listed on SBA's Franchise Registry?
- e. Does the firm appear to be a broker (i.e. does the firm merely distribute products manufactured by other firms without adding any value to these products and without taking possession of the goods as inventory or handling them with its own equipment or facilities)?
- f. Has any individual claiming disadvantaged status transferred assets to an immediate family member, or a trust benefiting an immediate family member, within the last two years? If so, is there an explanation of the transfer with supporting documents? Does the purpose of the transfer comply with the program criteria? See 13 CFR § 124.104(c)(1).

CHAPTER 2C: APPLICATION PROCESSING – 8(a) APPLICATION REVIEW PROCESS

- 1. Who Is Responsible for the Initial Processing of Applications for 8(a) BD Program Eligibility?**
 - a. For all applicants, the BOS in the San Francisco or Philadelphia CODS serving the territory where the applicant's principal place of business is located reviews (processes) an 8(a) application to determine if it satisfies the relevant program criteria.
 - b. The San Francisco CODS reviews (processes) all 8(a) applications submitted on behalf of concerns owned by ANCs no matter where the applicant's principal place of business is located.
 - c. Upon completion of screening and the decision to accept an application for processing the CODS must immediately update the electronic tracking/application system.

2. What Information and Criteria Must the BOS Consider When Conducting an Eligibility Review?

When reviewing an application for program eligibility, the BOS must examine and evaluate the entire application. The BOS's review must address all issues of 8(a) BD program eligibility.

3. How Long Does SBA Have to Review (Process) an Application for Program Eligibility Once the Application has been Accepted?

- a. For all applicants, the SBA has 90 calendar days to process an application and issue a decision letter to the applicant.
- b. This 90 day period includes processing times for the CODS, the D/OCE, the Office of General Counsel (OGC), and the AA/BD. NOTE: The processing time will be suspended if an applicant is referred to OIG and/or the appropriate Area Office for a formal size determination.

4. Can the CODS Request Additional Information After an Application Has Been Accepted for Processing?

- a. If, during the eligibility review process, the CODS determines that an application is incomplete, the BOS may request additional information or clarification from the applicant.
- b. The BOS must send a request for supplemental information to the applicant via a delivery method that tracks delivery and provides return receipt capability. The applicant must provide the requested information within five (5) calendar days of its receipt of the request for supplemental information. The BOS must inform the applicant that its failure to timely submit additional information may force SBA to presume that it is not eligible for participation in the 8(a) BD program. See 13 CFR § 124.204(c)
- c. A request for additional information does not stop the processing clock. As a result, once the requested information is provided, the case may require priority handling in order for the CODS to complete the eligibility review within the required timeframe.

5. Is a BOS Required to Fully Process an Application That Appears to Be Obviously Ineligible for the Program?

- a. Yes. The BOS must conduct a complete review and analysis of each application and address all eligibility areas even if an application appears to be

obviously ineligible (e.g., the firm does not appear to satisfy threshold matters such as size or citizenship requirements).

- b. Although the reasons for declining an application may appear obvious and clear-cut, an applicant may be able to overcome these reasons upon reconsideration.
- c. Because an applicant may typically submit only one request for reconsideration, it is essential that the BOS address all of the eligibility requirements during the original eligibility review so that the applicant knows what steps it needs to take in order to correct each of its eligibility problems.
- d. In some cases the BOS may request that HQ contact the applicant prior to conducting a full review to notify the applicant an early indication that the applicant is not eligible for the 8(a) BD Program

6. When Are Legal Reviews Required for an 8(a) Application?

- a. The CODS must obtain a legal review for all proposed decline decisions, except those decisions based solely on non-appealable grounds (i.e., grounds other than social disadvantage, economic disadvantage, ownership or control), and all proposed decisions on applications involving non-designated group members, Indian tribes, ANCs, NHOs, and CDCs. OGC performs this legal review and issues an opinion regarding the legal sufficiency of the proposed decision. Legal review is not required on approvals except on those applications where the individual(s) is/are claiming social disadvantage based on preponderance of the evidence (not a designated group member).
- b. In all other cases, the CODS have the discretion to seek legal review of proposed decisions on applications or related documentation.
- c. The request for a legal review does not extend the time frames for review by the CODS, D/OCE, or AA/BD.

7. What Is Needed for Legal Sufficiency Review?

If legal review of the case is required or desired, the BOS will submit copies of all relevant documents (including its recommendations and comments) to OGC. The transmission of an application package to OGC for legal review does not stop the processing clock.

8. What Role Does the Chief of the CODS Play in the Review Process?

- a. After a BOS has finished reviewing an application, the BOS will submit the case file, the BOS Analysis , and a decision letter to the Chief for review. The BOS will also transmit the electronic copies of the BOS Analysis and the draft decision letter to the Chief.
- b. The application package must clearly present the recommendations and identify any noteworthy issues or concerns.
- c. The Chief will examine each section of the BOS analysis and decision letter to verify that the BOS has taken all required steps and properly applied all regulations.
- d. After the Chief completes this examination, he or she will return the case file and attachments to the BOS along with any applicable comments and recommendations

9. What Happens After the Reviewing BOS Receives an Application Back From the Chief?

- a. After receiving the Chief's comments, the BOS will make any changes/corrections to the analysis or decision letter requested by the Chief.
- b. After the BOS analysis and decision letter have been cleared by the Chief, the Chief will sign and return the case file to the processing BOS. The Chief makes his or her recommendation in the electronic application system (which is equivalent to transmitting it to the D/OCE).
- c. The application remains in the CODS unless requested by the D/OCE, the AA/BD or OGC where applicable.

10. Who Is Responsible for Making the Final Determination as to Whether an Applicant is Eligible for Participation in the 8(a) BD Program?

- a. The ultimate responsibility and authority for deciding whether to accept or decline an application rests with the AA/BD.
- b. Although the AA/BD may draw upon the policy recommendations and legal opinions presented by other SBA personnel when making his or her decision, decision-making authority over 8(a) applications is vested solely in the AA/BD.
- c. The AA/BD will make his or her decision after receiving the D/OCE recommendation.

- d. Once the AA/BD has made his or her decision regarding the applicant's eligibility, he or she signs the decision letter and the electronic application system will notify the firm by issuing a copy of the approval or decline letter
- e. All decline letters must clearly explain the reason(s) for decline, including a direct reference to those provisions of the regulations that the applicant has failed to satisfy. The letter must also inform the applicant of its right to request reconsideration and, if applicable, appeal to OHA, and must briefly describe the procedures the applicant must follow in order to exercise these rights, as prescribed in 13 CFR Part 134.

11. What Does the OCE Do After Receiving the AA/BD's Decision on Initial Application?

- a. If the application has been approved, an approval letter along with the Participation Agreement is sent electronically to the applicant.
- b. The approval letter must instruct the applicant to immediately sign and return one copy of the Participation Agreement to the DO where the applicant's principal place of business is located and keep a copy for their own records.
- c. The CODS will attach the approval letter to the 8(a) application file and forward the file to the appropriate servicing DO.
- d. If the application has been declined and the applicant has a right to submit an appeal to OHA, the OCE must send the decline letter to the applicant by a delivery method that tracks delivery and provides return receipt capability, along with OHA appeal instructions.
- e. If the application is declined and the applicant has no appeal rights, the final decline letter must be sent by a delivery method that tracks delivery and provides return receipt capability.
- f. When the AA/BD rejects an 8(a) application, a copy of the decline letter will be sent to the appropriate universal mailbox of the DO servicing the area where the applicant's principal place of business is located. This will allow the DO the opportunity to assist the applicants with addressing the reasons noted for declining the application.

12. Does the OCE Have Any Reporting Requirements?

Public Law 100-656, §408 requires the OCE to maintain a data file of all firms approved during each fiscal year. This file will include the average personal net worth of individuals who own

and control each concern and the dollar distribution of personal net worth, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged.

13. After the CODS Receives Notice of the AA/BD's Decision from the OCE, What Happens to the Application Case File?

- a. The CODS will place a copy of the decision letter in the application file.
- b. If the application is approved, the CODS will forward the complete file to the Lead Business Opportunity Specialist (LBOS) in the DO where the applicant's principal place of business is located.
- c. If the application is declined, the CODS will store the file in its file room for archives and eventual disposal according to the agency's official Records Management Schedule.

CHAPTER 2D: DETERMINING INDIVIDUAL AND BUSINESS ELIGIBILITY

1. What General Requirements Must an Applicant Concern Meet in Order to Be Eligible for the 8(a) Business Development (8(a) BD) Program?

The general requirements for program eligibility include:

- a. U. S. Citizenship - 13 CFR § 124.101
- b. Size - 13 CFR § 124.102
- c. Social Disadvantage - 13 CFR § 124.103
- d. Economic Disadvantage - 13 CFR § 124.104
- e. Ownership - 13 CFR § 124.105
- f. Control and Management - 13 CFR § 124.106
- g. Potential for Success - 13 CFR § 124.107
- h. Other Eligibility Requirements - 13 CFR § 124.108
- i. For OHA interpretations of social disadvantage, economic disadvantage, ownership, control and management, please see their decisions at <https://www.sba.gov/oha/decisions>.

2. Must an Individual Upon Whom Eligibility Is Based Be a U.S. Citizen?

Yes. Individuals who were born outside of the United States must provide proof of citizenship. Proof of citizenship may take the form of a U.S. Passport or Naturalization Papers.

3. How Does the BOS Establish that the Applicant Is a Small Business?

- a. The BOS must identify the applicant's primary NAICS code as listed in its application. The BOS must then look up the corresponding size standard for this NAICS code in the size regulations (13 CFR § 121.101, *et seq.*). Information on size standards and NAICS codes may also be found on SBA's website <https://www.sba.gov/content/small-business-size-standards>, and OHA's website. The BOS must examine the applicant firm's average annual receipts or number of employees in order to determine if the firm is below the relevant size standard. If the firm meets the size standard, it qualifies as small. Exceptions may apply if the firm has affiliates.
- b. When examining the size of the applicant firm, the BOS must examine any potential issues involving affiliation. The issue of affiliation arises where the

applicant firm controls another firm or is controlled by another firm (e.g., one firm is a subsidiary of the other). Affiliation also arises where one individual has the power to control both the applicant firm and another firm (e.g., the same individual owns and operates two businesses, one of which is seeking to participate in the 8(a) BD program) or there are identical or substantially identical business or economic interests, such as family members, persons with common investments or firms that are economically dependent through contractual or other relationships. SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships in determining whether affiliation exists. *See* 13 CFR § 121.103.

- c. NOTE: SBA may determine that firms have “substantially identical business or economic interests” if the evidence shows that the firms are “economically dependent through contractual or other relationships.” If the firms are economically dependent, SBA will presume them to be affiliated. In interpreting this provision, OHA has held, as a matter of law that a firm is economically dependent upon another if it derives 70% or more of its revenue from that firm. *Size Appeal of Faison Office Prodv., LLC*, SBA No. SIZ-4834, at 10 (2007); *see also Size Appeal of Ma-Chis Project Controls, Inc.*, SBA No. SIZ-5486 (2013); *Size Appeal of Strategic Defense Solutions, LLC*, SBA No. SIZ-5475 (2013); *Size Appeal of VMX Int’l, LLC*, SBA No. SIZ-5427 (201 2); *Size Appeal of Norris Prof’l Servs., Inc.*, SBA No. SIZ-5289 (2011); *Size Appeal of Eagle Consulting Corp.* SBA No. SIZ-5267, at 5 (2011), *recons. denied*, SBA No. SIZ-5288 (2011)(PFR). OHA has recognized that “affiliation through contractual relationships may be based on findings from a single fiscal year.” *Size Appeal of TPG Consulting, LLC*, SBA No. SIZ-5306, at 14 (2011) (quoting *Size Appeal of Supreme-Tech., Inc.*, SBA No. SIZ-4092, at 5 (1995)). Furthermore, “a contractual relationship between two concerns with one heavily dependent for its revenues on another is alone sufficient to support a finding of affiliation, even if there are no other ties between the firms.” *Size Appeal of Incisive Tech. Inc.*, SBA No. SIZ-5122 at 4 (2010). OHA has also recognized exceptions to the 70% rule for relatively new businesses, stating that “where the challenged firm has only recently begun operations either initially or after a period of dormancy, and is dependent upon its alleged affiliate for only one small contract of short duration, which by itself could [not] sustain a business, that a finding of economic dependence is not warranted.” *Size Appeal of Argus and Black*, SBA No. SIZ-5204, at 6-7 (2011). Subsequently, OHA reiterated its holding from *Argus and Black*, and explained that: “[D]espite [the 70% rule

from] *Faison*, a concern may be found not to be affiliated with a concern which is responsible for all or nearly all of its revenue if the ‘mechanical application of the rule . . . would be an injustice’ . . . ‘places too large a significance on too small a contract’ and ‘would unduly penalize start-up operations, which may have had a chance to obtain only one or two contracts at the time they face a size determination.’” *Size Appeal of SP Techs.*, SBA No. SIZ-5319 at 5 (2012) (quoting *Argus and Black*, SBA No. SIZ-5204 at 6).

- d. An 8(a) applicant must be small for its primary industry at the time SBA certifies it for admission to the 8(a) Program. 13 CFR § 121.602. For purposes of a formal size determination, size is determined as of the date of application and, where applicable, the date GCBD requests a formal size determination. 13 CFR § 121.404(b). If 8(a) BD program officials determine that a concern may not qualify as small, they may deny an application for 8(a) certification or may request a formal size determination under 13 CFR Part 121.
- e. A concern whose application is denied solely due to size by 8(a) BD program officials may request a formal size determination under 13 CFR Part 121. A favorable determination will enable the firm to immediately submit a new 8(a) BD application without waiting one year.
- f. If the D/OCE concludes that an application may involve affiliation problems, or if he or she is otherwise unable to determine whether or not the applicant firm meets the applicable size standard, the D/OCE may refer the matter to the appropriate Area Office of the Office of Government Contracting for a formal size determination if size is the sole ground for decline. The appropriate Area Office is that office which has responsibility for the area in which the headquarters of the applicant firm is located. The BOS must then enter the request for a formal size determination in the Certification Tracking System. This action freezes the 90 calendar day eligibility review clock.

4. How Does SBA Define Socially Disadvantaged Individuals?

- a. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond the control of the individual. *See* 13 CFR § 124.103(a).

- b. An individual who uses his or her social-disadvantage eligibility to qualify a business for the 8(a) BD program is no longer treated as disadvantaged for future applications. *See* 13 CFR § 124.108(b).

5. How Does the BOS Determine Social Disadvantage?

- a. If an individual is a member of a group designated by SBA as socially disadvantaged [i.e., Black Americans, Hispanic Americans, Native Americans (including Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe), Asian Pacific Americans, and Subcontinent Asian Americans], there is a rebuttable presumption that the individual is socially disadvantaged. In the absence of evidence to contradict this presumption, the BOS must find the individual to be socially disadvantaged. If a BOS has reason to question whether an individual holds himself or herself out as a member of a designated group, the BOS may require the individual to provide credible evidence that the individual, in fact, holds himself or herself out as a member of the group and that others identify him or her as belonging to that group.
 - (1) For example, individuals who claim disadvantaged status as Hispanic Americans may establish their membership in that designated group by providing birth certificate showing race, membership cards to exclusive Hispanic groups, or other evidence. . An individual is not a member of a designated group merely because he or she was born in the particular region typically associated with members of that group.
 - (2) If an individual is claiming disadvantaged status as a Native American and he or she is not an enrolled member of a State or Federally recognized tribe, he or she must demonstrate his/her individual social disadvantage based on a preponderance of the evidence. 13 CFR § 124.103.
- b. If an individual claiming social disadvantage is not a member of a group presumed to be socially disadvantaged, the BOS must examine all the evidence of social disadvantage presented by the individual to determine if the individual has established all of the elements of social disadvantage by a preponderance of the evidence.
 - (1) The “preponderance of the evidence” standard requires the individual to present evidence of greater weight or more convincing effect than the evidence in opposition to it. OHA has held that an individual’s statements claiming discrimination are, by themselves, sufficient to establish social

disadvantage if not contradicted by other evidence unless the statements are inherently improbable, inconsistent, lacking in sufficient detail or conclusory or if the individual fails, without sufficient explanation, to provide apparently available evidence to support the claim. *See Matter of Bitstreams, Inc.*, SBA No. 122 (1999). The individual is not required to corroborate statements of discrimination with independent evidence, but may strengthen a case that would otherwise inadequately demonstrate discrimination by submitting information such as statements or affidavits from third parties, court or administrative findings, documentation relating to rejected contracts (i.e., bid abstracts, solicitations, and other typical contract correspondence), or payroll and personnel records. A decline letter must clearly state why SBA believes that statements are inherently improbable, inconsistent, conclusory, lacking detail or lacking apparently available evidence. *See Matter of Woroco International*, SBA No. BDP-174 (2002). It is important to establish the level of proof required of an 8(a) BD program applicant. “Although an applicant does not have to provide conclusive proof of an event, the event ‘must be presented in sufficient detail to be evaluated.’” *Strategygen Co.*, SBA No. BDPE-460 (2012) (citing *Seacost Asphalt Servs., Inc.*, SBA No. SDBA-151 (2001)). “If an applicant fails to present sufficient detail to establish an incident occurred, the SBA must explain, in its initial determination, the application’s deficiencies and advise the applicant what information is needed to establish the incident should the applicant request reconsideration.” *Matter of Ace Technical, LLC*, SBA No. SDBA-178 (2008). “The SBA should recognize that in some situations it may be inappropriate to provide detailed facts concerning an incident when it is necessary to protect an applicant’s privacy or prevent embarrassment. In such cases, an applicant must explain why sufficient detail is not provided.” *Id.*

- c. Common elements of social disadvantage:
- (1) Objective Distinguishing Feature. In order to conclude that an individual who is not a member of a designated group is socially disadvantaged, the BOS must verify that the individual possesses at least one objective distinguishing feature that has contributed to his or her social disadvantage. This feature may take many forms including race, ethnic origin, gender, physical handicap, or long-term residence in an environment that is isolated from mainstream America (e.g. a Hasidic Jewish enclave, Appalachia, or an Amish community).

- (2) **Chronic and Substantial Discrimination.** The BOS must also review the information provided in order to determine if the individual has personally suffered recurring (chronic) episodes of discrimination. This discrimination must be substantial or serious in nature and must have stemmed from circumstances beyond the individual's control. General patterns of discrimination against a non-designated group or statistics showing that businesses owned by members of a particular non-designated group are chronically underrepresented in a given industry may be used to provide additional support for an individual's claim of social disadvantage, but do not alone establish discrimination since they do not reflect personal experiences of discrimination encountered by the individual claiming social disadvantage. Further, the discrimination must have occurred within American society, not in other countries.
- (3) **Negative Impact on Entry/Advancement in Business.** The BOS must also verify that the discriminatory treatment the individual received has had a negative impact upon his or her entry into or advancement in the business world. In determining whether this type of negative impact has occurred, the BOS must consider the individual's education, employment, and business history. It is not necessary for an individual to present evidence of social disadvantage in all three of these areas. Rather, the BOS must look to the totality of the circumstances in order to determine whether the individual has suffered discrimination in his or her efforts to enter into or advance in the business world. If an individual presents credible, preponderant evidence of social disadvantage in one of the three stipulated areas but offers no evidence in the other two, the totality of the circumstances test may still be satisfied. Individuals who can show social disadvantage in all three areas may not have to present evidence that is as weighty as those who can only show such disadvantage in one or two areas. OHA has held that two instances of discrimination in one area were sufficient to establish social disadvantage in several cases.
- (4) **Negative Impact on Education.** If an individual who is not a member of a designated group claims that he or she has experienced social disadvantage in the area of education, the BOS must examine the evidence presented to determine if the individual has suffered any of the following forms of discrimination: Denial of equal access to institutions of higher learning; exclusion from social or professional association with students or teachers; denial of educational honors rightfully earned; and/or social

patterns or pressures that discouraged the individual from pursuing a professional or business education.

- (5) Negative Impact on Employment. If an individual who is not a member of a designated group claims that he or she has experienced social disadvantage in the area of employment, the BOS must examine the evidence presented to determine if the individual has suffered any of the following forms of discrimination: unequal treatment in hiring, promotions, or other aspects of professional advancement; unequal treatment in the receipt of pay, fringe benefits, or other terms and conditions of employment; retaliatory or discriminatory behavior by employers; and/or social patterns or pressures that channeled the individual into non-professional or non-business fields.
 - (6) Negative Impact on Business History. If an individual who is not a member of a presumed group claims that he or she has experienced social disadvantage in the area of business history, the BOS must examine the evidence presented to determine if the individual has suffered any of the following forms of discrimination: unequal access to credit or capital, or the acquisition of credit or capital under commercially unfavorable circumstances; unequal treatment in obtaining opportunities for government contracts or other work; unequal treatment by potential customers or business associates; and/or exclusion from business or professional organizations.
- d. The CODS evaluation of the claim of social disadvantage submitted by an individual who is not a member of a presumed group must be outlined in the BOS Analysis. This also includes any individual claiming to be Native American who is not an enrolled member of a State or Federally recognized tribe.
 - e. When reviewing the non-disadvantaged applicant's social disadvantage narrative, the BOS must ensure that the narrative contains significant detail. To constitute sufficient detail to prove social disadvantage, the description of the individual's encounters with bias or prejudice must generally include:
 - (1) When and where the incident occurred;
 - (2) Who committed the act;
 - (3) How the incident took place; and
 - (4) How the individual was adversely affected.

6. How Does SBA Define Economically Disadvantaged Individuals?

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished credit and capital opportunities as compared to others in the same or similar line of business that are not socially disadvantaged. *See* 13 CFR § 124.104(a).

7. How Does the BOS Determine If an Individual Is Economically Disadvantaged?

- a. In determining if an individual's ability to compete in the free enterprise system has been impaired due to diminished credit and capital opportunities, the BOS must consider the personal financial condition of any individual claiming disadvantaged status including personal income for the past three years, personal net worth, and the fair market value of all assets.
- b. An individual who exceeds any one of the thresholds for personal income, net worth, or assets will generally be deemed to have access to credit and capital and not economically disadvantaged.
- c. An individual claiming disadvantaged status must submit separate financial information for his or her spouse. SBA will consider a spouse's financial condition where:
 - (1) The spouse has a role in the business; or
 - (2) The spouse has lent money to, provided credit support to, or guaranteed a loan of the business.
- d. SBA will not take into consideration community property laws when determining economic disadvantage (but will for ownership).
- e. If an individual has an adjusted net worth of \$250,000 or more, the individual is not economically disadvantaged for initial 8(a) eligibility. NOTE: For continued 8(a) BD eligibility, SBA will presume that an individual is not economically disadvantaged if his or her adjusted net worth is \$750,000 or more.
- f. Adjustments to Net Worth:
 - (1) Equity in primary residence. The BOS must exclude from the individual's net worth the individual's share of the equity in his or her primary personal residence. *See* 13 CFR § 124.112(d). The equity is the market value of the primary personal residence less any mortgages and home equity loan balances. The BOS must ensure that home equity loan

balances are included in the equity calculation and not as a separate liability on the SBA Form 413.

- (2) Primary residence with partial rental unit(s). If an individual owns a duplex or a multiple-family dwelling that is partially used as a rental unit, only that portion of the dwelling that is used as a personal residence will be excluded from the net worth calculation.
- (3) Ownership interest in the applicant. The BOS must exclude from the individual's net worth his or her ownership interest in the applicant.
- (4) Contingent liabilities. These liabilities do not reduce an individual's net worth for 8(a) eligibility purposes.
- (5) Losses from S Corp, LLC, or Partnership. These losses are losses to the company, not the individual, and do not reduce an individual's net worth for 8(a) eligibility purposes.
- (6) Retirement accounts. The value of retirement accounts may or may not be excluded to reduce the individual's net worth. The BOS must have written certification, such as a self-prepared statement, that the retirement accounts are legitimate IRA or other official retirement accounts and documentation showing terms and restrictions of the account(s) to properly assess whether funds are immediately available to the individual without significant penalty. The written certification can be a self-prepared signed statement. *See* 13 CFR § 124.104(c)(2)(ii).
- (7) Transfers to immediate family members within two years. The BOS must include in the individual's net worth the value of any assets transferred for less than fair market value to an immediate family member within two years of the date of the application, unless the assets were transferred for educational or medical expenses or some other form of essential support or, were legitimate gifts for special occasions such as birthdays, anniversaries, or graduations. This includes assets the individual transferred to a trust if one of his or her immediate family members is a beneficiary of the trust.
- (8) S corporation income. Income received from an applicant or Participant that is an S corporation, limited liability company, or partnership may or may not be excluded to reduce the individual's net worth. The BOS must have documentary evidence showing the income was reinvested in the firm (e.g., used to pay off the firm's debts or legal fees) or used to pay

taxes arising in the normal course of operations of the firm to exclude it. *See* 13 CFR § 124.104(c)(2)(iii).

- g. Summary: To calculate the adjusted net worth, here are the steps:
- (1) Total Assets minus Total Liabilities;
 - (2) Then, subtract the value of any legitimate retirement account that has a penalty for early withdrawal of funds. This exclusion does not apply if the individual is of retirement age and can withdraw the funds without penalty;
 - (3) Then, subtract the equity in the primary residence, if any. Fair market value (individual's portion thereof) minus the mortgage balance (individual's portion thereof). If mortgage exceeds value, then subtract nothing.
 - (4) Then, subtract the individual's ownership interest in the participant firm.
 - (5) Include (add) income received from S Corporation, LLC, and/or Partnership, except income shown to have been reinvested into the firm, or income shown to have been used to pay taxes arising out of the normal course of business.
- h. Each individual upon whom eligibility is based and his or her spouse must submit a separate SBA Form 413 (Personal Financial Statement). The statement must include all assets owned by each individual, including but not exclusively any ownership interest in the applicant concern, personal assets, and the value of his or her personal residence.
- (1) When computing an individual's net worth to determine economic disadvantage, the BOS must make the adjustments as identified in subparagraph f – "Adjustments to Net Worth" of this section.
 - (2) Married individuals must provide a separate SBA Form 413 for his or her spouse showing the value of the spouse's personal assets and liabilities (*See* 13 CFR § 124.104). If assets listed on a non-disadvantaged spouse's SBA Form 413 were included on the disadvantaged spouse's SBA Form 413 and would cause the disadvantaged spouse to exceed the \$250,000 net worth limitation for economic disadvantage, the applicant must provide documentation of each spouse's ownership portion by submitting items such as bank statements, brokerage account statements, deeds and titles to vehicles; and any other evidence of each individual's respective property

(e.g., copies of post or pre-nuptial agreements showing respective ownership).

- i. Personal income of the individual for the past three years.
 - (1) If an individual's adjusted gross income, averaged over three years, exceeds \$250,000, SBA will presume that such individual is not economically disadvantaged.
 - (2) NOTE: For continued 8(a) BD eligibility, this value rises to \$350,000.
 - (3) The presumption may be rebutted pursuant to 13 CFR § 124.104(c)(3) by a showing that: This income level was unusual and not likely to occur in the future (such as lottery winnings); that losses commensurate with and directly related to the earnings were suffered; or by evidence that the income is not indicative of lack of economic disadvantage.
 - (4) S corporation, LLC, and Partnership Income. Income received from an applicant or Participant filing its taxes as an S corporation, LLC, or partnership may or may not be excluded to reduce the individual's personal income. The BOS must have documentary evidence showing the income was reinvested in the firm (e.g., used to pay off the firm's debts or legal fees) or used to pay taxes arising in the normal course of operations of the firm to exclude it. *See* 13 CFR § 124.104(c)(3)(ii).
- j. Total assets of the individual.
 - (1) The 8(a) BD program is not intended to assist concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, who have unlimited growth potential or who have not experienced or have overcome impediments to obtaining access to financing, markets and resources. The analyst will review the total fair market value of the individual(s) assets and determine if that level appears to be substantial and indicate an ability to accumulate wealth.
 - (2) If the applicant individual has total assets that exceed \$4 million dollars, that individual will generally not be considered economically disadvantaged.
 - (3) NOTE: For continued 8(a) BD eligibility, this value rises to \$6 million.
 - (4) Adjustments to Assets:
 - (5) The full value of retirement accounts may or may not be excluded to reduce the total fair market value of the individual's assets. The BOS

must have certification that the retirement accounts are legitimate and documentation showing terms and restrictions of the account(s) to properly assess whether funds are immediately available to the individual without significant penalty. *See* 13 CFR §§ 124.104(c)(2)(ii) and 124.104(c)(4).

- (6) Legitimate retirement accounts are the only potential assets excluded from the total asset determination. The fair market value of an applicant individual's primary residence and the value of the applicant/Participant firm are included in the calculation of total assets.

8. How Does the BOS Determine If an Applicant Concern Satisfies the Ownership Criteria?

In order to be eligible for participation in the 8(a) BD program, at least 51 percent of an applicant concern must be directly and unconditionally owned by one or more socially and economically disadvantaged individuals. *See* 13 CFR § 124.105.

a. Direct ownership.

- (1) In analyzing the ownership structure of an applicant firm (regardless of the legal structure it assumes), the BOS must verify that the company is unconditionally owned directly by a disadvantaged individual, unless it is owned by an ANC, Indian tribe, NHO or CDC. This direct ownership requirement means that the applicant firm cannot be a subsidiary of another business owned by the disadvantaged individual.
- (2) The direct ownership requirement also prohibits the applicant firm from being owned by a trust. However, ownership by a trust, such as a living trust, may be treated as direct ownership if the trust is revocable, and the disadvantaged individual is the grantor, the sole trustee, and the sole current beneficiary of the trust. *See* 13 CFR § 124.105(a).

b. Unconditional ownership.

- (1) In reviewing the ownership structure of an applicant firm, the BOS must verify that there are no conditions on the interests held by the firm's disadvantaged owners. The interests of the disadvantaged owners cannot be subject to any executory agreements, voting trusts, restrictions on or assignments of voting rights, or any other arrangements or conditions that could result in the transfer of their interests to other parties. This

restriction does not include arrangements for the transfer of ownership interests in the event of the holder's death or incapacity.

- (2) If an applicant has pledged or encumbered his or her stock or other ownership interest as collateral on a loan or other obligation, this does not violate the requirement of unconditional ownership. However, the terms of the loan or obligation must follow normal commercial practices and the disadvantaged owner must retain control over the firm unless and until there is a default on the loan or obligation.
- (3) The BOS must also determine whether any of the firm's disadvantaged owners are married and are residents of a community property state. Under community property laws, one half of all community property (that is, property accumulated by both parties during the marriage) belongs to each spouse. Therefore, married disadvantaged owners who are residents of community property states may only count half of their ownership interests toward the 51 percent ownership requirement. For example, if a disadvantaged sole proprietor lived in a community property state, he or she would own 50 percent of the sole proprietorship and his or her spouse would own the other 50 percent. In such a situation, if the disadvantaged sole proprietor's spouse is not a disadvantaged individual, the 51 percent ownership requirement would not be satisfied. In order for this sole proprietorship to be eligible for the 8(a) BD program, the non-disadvantaged spouse would have to transfer back to the disadvantaged sole proprietor whatever percentage interest in the firm is necessary to give him or her 51 percent ownership. If only one spouse residing in a community property state claims disadvantage, the applicant must file evidence of how much of the applicant concern is community property and how much is the disadvantaged spouse's separate property. If the non-disadvantaged spouse's community property interest in the applicant concern is 50 percent, evidence that the non-disadvantaged spouse has waived enough of his or her interest in the community property (that is, through a transmutation agreement) that the disadvantaged spouse unconditionally owns 51 percent or more of the applicant concern. *See Matter of Philip Hawkins Architect, Inc. & Associates*, SBA No. BDP-197, at 3-5 (2003) (transmutation agreement not required to prove disadvantaged husband's 51 percent ownership of applicant concern if his combined separate and community property interest in applicant concern totaled at least 51 percent); 13 CFR § 124.105(k) ("If only one spouse claims disadvantaged status, that spouse's ownership interest will be

considered unconditionally held only to the extent it is vested by the community property laws.”) NOTE: The laws of Puerto Rico do not allow transmutation agreements.

- c. Documentation concerning ownership structure. In assessing the ownership structure of an applicant concern, the BOS must examine the Partnership Agreement, Articles of Incorporation, Articles of Organization, Operating Agreement, Bylaws, stock certificates, stock register, purchase agreements, ownership transfer documents, and any and all other documents that have some bearing upon the ownership of the firm. Further, the BOS must verify ownership in specific business structures as follows:
- (1) Sole Proprietorships. Typically a sole proprietorship is 100 percent owned by a single individual. However, in a community property state, the BOS must verify that the sole proprietor owns at least 51 percent of the applicant firm. In either case, the sole proprietor must be a disadvantaged individual. IRS Form 1040, Schedule C, identifies the owner as well as the social security number. This should be verified during the review.
 - (2) Partnerships. Where the applicant firm is a partnership, the BOS must verify that disadvantaged individuals own at least 51 percent of every class of partnership interest. This ownership arrangement must be formally expressed in the partnership agreement.
 - (3) Limited Liability Companies. Where the applicant firm is a limited liability company, the BOS must verify that disadvantaged individuals own at least 51 percent of each class of membership interest.
 - (4) Corporations. Where the applicant firm is a corporation, the BOS must verify that disadvantaged individuals own at least 51 percent of each class of voting stock outstanding and own at least 51 percent of the aggregate of all of the corporation’s outstanding stock (including non-voting stock). The BOS must further verify that disadvantaged individuals are entitled to receive the following:
 - (5) At least 51 percent of the annual dividends paid to stockholders;
 - (6) 100 percent of the value of each share of stock they own in the event their stock is sold or the corporation is dissolved; and
 - (7) At least 51 percent of the corporation’s retained earnings.
- d. Stock options’ impact on ownership. In determining whether an applicant firm meets the 51 percent ownership requirement, the BOS must ignore any

unexercised stock options or similar rights held by the disadvantaged owners. This includes their right to convert non-voting stock or debentures into voting stock. However, the BOS must treat any unexercised stock options held by non-disadvantaged individuals as though they have already been exercised. This rule may be waived under extraordinary circumstances, such as where an option is exercisable only after the death of the disadvantaged individual.

e. Ownership restrictions.

- (1) The BOS must determine whether the individual(s) claiming disadvantaged status has an immediate family member that is using or has used their disadvantaged status to qualify another firm in the same or similar line of business for the 8(a) BD program. If so, then the individual may not use his/her disadvantaged status to qualify the current applicant. This prohibition may be waived by the AA/BD if the firms involved have no connections in the form of ownership, control, or contractual relationships and the individual seeking to qualify the current concern has managerial and technical experience in the firm's primary industry. Barring clear and compelling evidence of there being no connections between the firms, there is a presumption against granting a waiver of this prohibition. When comparing two firms to determine if they are in the same or similar line of business, the starting point for comparison is the four-digit Industry Code of each firm's primary NAICS code. If the first four digits (i.e., the four-digit Industry Code) of the firms' primary NAICS codes are the same, then the two firms are in the same or similar line of business. *See* 13 CFR §§ 124.3 and 124.105(g).
- (2) If a non-disadvantaged individual (in the aggregate with members of his or her immediate family) or a firm that is not a Program Participant owns 10 percent or more of the applicant concern, the BOS must verify that this individual or firm does not also own more than 10 percent of a current Program Participant in the developmental stage (first four years of program participation) or more than 20 percent of a current program participant in the transitional stage (final five years of program participation). This requirement does not apply where the non-Participant firm in question is a financial institution. *See* 13 CFR § 124.105(h)(1).
- (3) If a firm that is not a Program Participant operates in the same or similar line of business as the applicant concern, the BOS must verify that this firm and any of its principals, do not own more than 10 percent of a Participant in the developmental stage (first four years of program

participation) or more than 20 percent of a Participant in the transitional stage (final five years of program participation) of the program. However, a former Program Participant or the principals of a former Program Participant (unless the Participant was terminated from the program) in the same or similar line of business may own up to 20 percent of an applicant concern (this percentage increases to 30 percent after the applicant enters the program and reaches the transitional stage). *See* 13 CFR § 124.105(h)(2).

9. How Does the BOS Determine Whether the Applicant Concern Satisfies the Control and Management Requirements?

The BOS must examine the information contained in the applicant's Partnership Agreement, Articles of Incorporation/Organization, Corporate Bylaws, shareholder and board meeting minutes, and/or Operating Agreement (as applicable), the applicant firm's tax returns, the terms and conditions of its notes or loan agreements, any management, teaming, or joint venture agreements, and the licenses and resumes of its employees, partners, directors and officers (as applicable). This examination enables the BOS to review the applicant's compliance with eligibility requirements concerning disadvantaged control and management of the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations by disadvantaged individuals. It also enables the BOS to review other aspects of control and management such as the full-time commitment and skills of its managers, compensation, and relationships with former employers. *See* 13 CFR § 124.106.

10. How Does the BOS Determine Whether the Applicant Concern Satisfies the Control of Strategic Planning Requirements?

- a. Corporations. The Board of Directors controls strategic planning for a corporation. There are six situations where the BOS may find disadvantaged individuals control a Board of Directors:
 - (1) If a single disadvantaged individual owns 100 percent of all issued and outstanding voting stock of an applicant firm, regardless of the composition of the Board of Directors.
 - (2) If a single disadvantaged individual owns at least 51 percent of all issued and outstanding voting stock of the applicant firm, is legally elected a voting member of the Board of Directors, and no super majority voting requirements exist for shareholders to approve corporate actions.

- (3) If a single disadvantaged individual owns at least 51 percent of all issued and outstanding voting stock of the applicant firm, is legally elected a voting member of the Board of Directors, there are super majority voting requirements, and the disadvantaged individual owns at least the percentage of voting stock needed to overcome any super majority voting requirements that exist for shareholders to approve corporate actions.
- (4) If multiple disadvantaged individuals own at least 51 percent of all issued and outstanding voting stock of the applicant firm, all are legally elected voting members of the Board of Directors, no super majority voting requirements exist for shareholders to approve corporate actions, and the disadvantaged shareholders can demonstrate they have made enforceable arrangements to permit one of them to vote the stock of all as a block without holding a shareholder meeting.
- (5) If multiple disadvantaged individuals own at least 51 percent of all issued and outstanding voting stock of the applicant firm, all are legally elected voting members of the Board of Directors, there are super majority voting requirements, all together own at least the percentage of voting stock needed to overcome the super majority voting requirements which exist for shareholders to approve corporate actions, and the disadvantaged individuals can demonstrate they have made enforceable arrangements to permit one of them to vote the stock of all as a block without holding a shareholder meeting.
- (6) If the disadvantaged individuals can control the formation of a quorum for the purpose of holding a board meeting and have a majority vote at board meetings either through actual number of voting directors or through weighted voting, where permitted by state law. For example, if a firm had two directors, one disadvantaged and one not, the disadvantaged director's vote could count as two votes and the non-disadvantaged director's vote could count as one. Such an arrangement must be spelled out in a corporation's Articles of Incorporation or Bylaws. However, if this approach is used to satisfy the control requirement, the firm must not be subject to any quorum requirements that would prevent the disadvantaged directors from exercising control. Quorum requirements state that a certain number of directors must be present at a board meeting in order for the actions taken at that meeting to be valid. In the two director example above, if that corporation required a quorum of two directors to be present, then the non-disadvantaged director could effectively veto a proposed

action by simply not attending the meeting. In such a situation, the disadvantaged director would not control the board. Further, if this approach is utilized, then all executive committees composed of directors must be controlled by disadvantaged directors. This requirement does not apply where an executive committee can only make recommendations and cannot independently exercise the authority of the firm's board of directors.

- b. **Limited Liability Companies.** Managing Member(s) (if the LLC is member-managed) or Manager(s) (if the LLC is manager-managed) controls the strategic planning for Limited Liability Companies. The BOS must determine that one or more disadvantaged management members have control of the decisions of the Limited Liability Company under the specific terms of its Articles of Organization and Operating Agreement, especially considering any super majority requirements (including unanimous voting and quorum requirements) for management member decisions.
- c. **Partnerships.** General partners control the strategic planning for a Partnership. The BOS must determine that a disadvantaged general partner(s) has control of the decisions of the Partnership under the specific terms of the Partnership Agreement, especially considering any super majority requirements (including unanimous voting and quorum requirements) for partner decisions.

11. How Does the BOS Determine Whether the Applicant Concern Satisfies the Control of Day-to-Day Management and Administration of Business Operations Requirements?

- a. **Management experience.** One or more disadvantaged individuals must possess the degree and type of management experience necessary for running the applicant concern. In determining whether this requirement is met, the BOS should review the characteristics of the firm and its industry, the disadvantaged individual's education and employment history, the disadvantaged owner's supervisory/managerial experience, the potential transferability of previous managerial experience to the operation of the firm, the disadvantaged individual's current role in the firm, etc.
- b. **Technical expertise.** If the firm's business operations require technical expertise or are subject to licensing requirements, the disadvantaged managers do not need to possess either the technical knowledge or required licenses provided they can demonstrate that they have ultimate managerial and supervisory authority over those employees of the firm who do hold the essential expertise

or licenses. However, if a non-disadvantaged individual *with an ownership interest* in the applicant firm holds a critical license, then that individual may be found to control the firm. In addition, if there is a question as to managerial authority, the BOS may require the disadvantaged individual to show that he or she has a strong enough background and a successful enough business that, if the individual with the technical expertise or critical license were to leave the firm, the disadvantaged individual would be able to continue to successfully operate the firm. The inability of the disadvantaged individual to show that he or she is not dependent on the non-disadvantaged individual's technical expertise or license and that the firm can attract someone else to replace this individual indicates that the non-disadvantaged individual possesses negative control.

- c. Full time devotion. The highest ranking officer must work for the applicant on a full-time basis during the normal working hours of firms in the same or similar line of business. However, work performed in a wholly owned subsidiary of the applicant firm may be considered in fulfilling this requirement. Work in firms in which the disadvantaged individual has an ownership interest does not fulfill this requirement. An individual who engages in outside employment which could conflict with the management of the firm or could hinder it in achieving the objects of its business development plan does not meet the full-time devotion requirement.
- d. Highest officer position. A disadvantaged full-time manager must hold the highest officer position in the applicant firm (e.g., President, CEO, Managing Partner, Managing Member, etc.). The BOS must review the business organization documentation to ensure that the position held by the disadvantaged full-time manager is authorized and is charged with the day-to-day management of the firm.
- e. Participation by non-disadvantaged individuals. The BOS must assess the impact of participation by non-disadvantaged individuals on control and management by disadvantaged individuals as follows:
 - (1) The BOS must verify that no non-disadvantaged owner or manager of the firm is a former employer of the applicant or a principal of one of the applicant's former employers. However, such circumstances do not automatically disqualify a firm where the relationship does not give the former employer or principal actual or potential control of the firm and the relationship is in the best interest of the firm.

- (2) The BOS must verify that no non-disadvantaged officer or other employee is paid more than the firm's highest-ranking officer. This compensation may be in any form, including dividends. The firm's highest-ranking officer may only be paid less than a non-disadvantaged officer or employee where doing so benefits the applicant in some way and is in the best interest of the firm.
- (3) The BOS will use the following questions to guide this analysis: Who is the individual that is higher compensated and what is his/her function in the firm? What is the compensation differential? Why isn't the disadvantaged applicant the highest compensated? How is this arrangement beneficial to the applicant?
- (4) The analysis and decision is done on a case-by-case basis. An application may be declined when the SBA deems the justification for higher compensation inadequate, not in the best interest of the applicant, or indicative of control by the highest compensated individual.
- (5) The BOS must verify that no non-disadvantaged individual transferred majority ownership or control of the firm to an immediate family member within the last two years and still remains involved with the firm as a stockholder, officer, director, or key employee. Such a circumstance does not automatically disqualify a firm where the family member to whom the interest was transferred has the independent management experience needed to control the firm's operations. *See* 13 CFR § 124.106(f).
- (6) The BOS must verify that no non-disadvantaged owner of the firm provides the firm with critical financing, bonding, or licensing support that directly or indirectly permits him or her to significantly influence the firm's business decisions.
- (7) The BOS must verify that the firm has not entered into a loan arrangement with a non-disadvantaged individual or entity that gives the lender an undue amount of control over the firm's actions. Merely providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-disadvantaged individual or entity the power to control the firm and disqualify an applicant firm.
- (8) The BOS must verify that the firm is not so dependent upon a business relationship with a non-disadvantaged individual or entity that it is not free to exercise independent business judgment without exposing itself to great economic risk. For example, if a firm is dependent on one client (a non-

disadvantaged entity) for contracts and revenues, the BOS may find that this business relationship causes the non-disadvantaged entity to control or have the power to control the firm.

12. How Does the BOS Determine If an Applicant Satisfies the Potential for Success Requirement?

- a. The 8(a) BD regulations state that an applicant concern must possess reasonable prospects for success in competing in the private sector before it will be admitted to the program. In order to demonstrate that it possesses the required potential for success, an applicant firm must meet several criteria.
- b. Two-year rule. A firm must show it has been conducting business in its primary industry for at least two full years as evidenced by the firm's tax returns. If a firm has not been in business for two years, it can still satisfy the length of time in business requirement if it qualifies for a waiver of the two year rule. The waiver criteria are as follows:
 - (1) The individual or individuals upon whom eligibility is based have demonstrated that they possess substantial business management experience;
 - (2) The applicant has demonstrated that it has the technical expertise it will need to carry out its business plan with a substantial likelihood for success;
 - (3) The applicant has adequate capital to sustain its operations and carry out its business plan;
 - (4) The applicant has a record of successful performance on contracts in its primary industry (e.g. copies of contracts, invoices, checks received for payment, deposit records or bank statements verifying payment of invoices, letters of reference from clients, etc.); and
 - (5) The applicant has (or can quickly obtain) the personnel, facilities, equipment, and other resources it needs to perform any 8(a) contracts it might be awarded.
 - (6) NOTE: If the firm has not generated revenues, the two-year rule cannot be waived.
- c. Financial Capacity. An applicant firm must demonstrate that it has sufficient access to capital and credit to maintain its business operations. In analyzing a firm's financial capacity, the BOS must:

- (1) Review the applicant's most recent or year-end financial statements, paying particular attention to its net worth, working capital, profitability, and revenues, looking out for any disturbing trends or patterns the statements may reveal (e.g., sustained losses or decreasing revenues);
 - (2) Determine the extent to which additional financing may be necessary or advisable, and identify potential sources of financing (including long-term financing, working capital financing, equipment trade credit, supplier trade credit, access to raw materials, and bonding capacity);
 - (3) Analyze the firm's credit position as revealed by its loan repayment history (including any SBA loans it may have obtained), business credit reports, and the pool of assets it has available for use as collateral, if applicable;
 - (4) Review the firm's assets (e.g., notes receivable from a shareholders) to ensure they are not over-inflated; and
 - (5) Ensure items listed on the financial statements correspond with Generally Accepted Accounting Principles, for example, "goodwill".
- d. **Managerial and technical expertise.** An applicant concern as a whole (taking into account all of its owners, officers, managers, and employees) must possess sufficient technical knowledge to operate in its primary industry and have adequate management experience to run its day-to-day operations. This required knowledge and experience does not need to be held by a single individual, but may instead be shared or divided among several persons. The applicant concern and its employees must also hold all licenses that are required for firms conducting business in its industry area (e.g., public accountancy, law, professional, engineering, construction, etc.).
- e. **Record of performance.** The applicant concern must demonstrate that it has a satisfactory record of performance on previous federal or private contracts in the primary industry in which it is seeking 8(a) certification. Evidence of the firm's record of performance may take the form of business tax returns, copies of contracts, letters of referral or recommendation, financial data, or other relevant documentation.
- f. **Level of contract support.** The applicant concern must operate in an industry having sufficient 8(a) contract opportunities available. In determining the level of available contract support in a given industry, the BOS must consult the report of 8(a) BD contracting activities presented to Congress. This report lists

all 8(a) BD contracts and modifications by NAICS code for the most recent fiscal year.

- g. The unavailability of potential contract opportunities cannot serve as the sole basis for denying an applicant admission to the 8(a) BD program unless: (1) the federal government has not previously procured the types of products or services offered by the applicant and is unlikely to do so in the future; or (2) the purchase of such products or services will not be in quantities sufficient to support the developmental needs of the applicant and other program participants in the same or similar line of business.

13. How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character and Other Eligibility Requirements; to Include the Assistance From the Office of Personnel Security and Office of Inspector General

- a. The 8(a) BD program regulations state that an applicant and all its principals (including proprietors, partners, limited liability members, directors, officers, holders of 10 percent or more of stock, and key employees) must possess good character. In assessing character, the BOS must review:
 - (1) SBA Form 912 which is forwarded to the Office of Personnel Security (OPS), if necessary;
 - (2) Reports from the OPS in response to referrals by the BOS resulting from positive responses to questions 7 through 9 on the SBA Form 912;
 - (3) GSA's list of debarred and suspended parties (www.sam.gov);
 - (4) Business credit reports for unpaid federal obligations and civil judgments impacting business integrity (e.g., fraud, breaches of trust, embezzlement, false claims, and false statements);
 - (5) Tax transcripts from IRS compared to business tax returns;
 - (6) Most recent or year-end financial statements; and
 - (7) Any other materials from the applicant or third parties impacting character (including the firm's websites and other website information on the firm and the individuals involved in the firm).
- b. Certain circumstances result in ineligibility due to lack of good character. Most common circumstances that impact eligibility due to lack of good character are:
 - (1) Violations of SBA regulations. The nature and severity of any violation of SBA's regulations must be considered in evaluating character.

- (2) Debarment and suspension. If an applicant or one of its principals is on the General Services Administration (GSA) list of debarred and suspended bidders, the firm is ineligible for the 8(a) BD program
- (3) Civil judgments. If a business credit report or other source reflects a civil judgment impacting integrity (e.g., fraud, breaches of trust, embezzlement, false claims, and false statements), the BOS must obtain the same information from the applicant concern or individual required for criminal convictions and this information must be evaluated under the same general guidelines
- (4) Indictments. If an applicant concern or a principal of an applicant is under indictment, this fact may serve as partial evidence of lack of character. An indictment by itself is not a reason for denial. However, an indictment along with other information may show that an applicant or principal has engaged in a pattern of improper behavior. The BOS must review indictments of a principal on a case-by-case basis in order to evaluate their bearing on the firm's responsibility to perform government contracts. The BOS must be careful to distinguish between felony indictments and those involving misdemeanors. The BOS must attempt to obtain a copy of the indictment from the applicant concern or individual. If this is not feasible, the applicant must provide SBA with the details of the indictment (i.e., the indictment number, court, persons and entities named, and offenses charged) along with a statement of the factual allegations of the indictment.
- (5) Incarceration, parole, or probation. If an applicant concern or one of its principals or key employees is currently incarcerated, on parole, or on probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity, the firm is ineligible for the program.
- (6) False Information. If an applicant concern or one of its principals knowingly submits false information to SBA, regardless of whether correct information would cause SBA to deny the application, and regardless of whether correct information was given to SBA in accompanying documents, SBA will deny the application. The BOS, after discussion with the CODS Chief, may report such false statements to the OIG.

- (7) Falsification of personal and business tax returns. If the BOS has reason to question the validity of the tax returns provided, the BOS may request the applicant to complete a 4506T and submit to the IRS. Upon receipt of these transcripts, the BOS must compare the data they contain with that listed on the tax return documents in the case file. If there are any discrepancies between the transcripts and the business tax returns in the case file, the BOS must note them on the evaluation form or inform the DO of the discrepancies. The BOS must also request that the firm submit an explanation of these discrepancies. Discrepancies that are serious in nature, such as falsification of returns, will result in a decline of the application or termination due to lack of business or personal integrity, and a referral to the Inspector General.
- c. Circumstances requiring a character analysis. Although many factors may enter into a character assessment, in reviewing the conduct of an applicant concern and its principals, the BOS must consider the conduct in light of its magnitude (severity), harm caused, repetition, and remoteness in time. Considering rehabilitation is a major thrust of our penal system, an isolated incident occurring over 10 years ago is typically considered too remote to adversely impact character. Specific circumstances include:
- (1) Criminal convictions or guilty pleas. If the OPS report does not reflect the disposition of arrests, the BOS must obtain court records reflecting the disposition from the individual since arrests not resulting in a guilty plea or conviction do not adversely affect the character analysis. Further, the BOS must obtain from the applicant concern or individual all details concerning the guilty plea or conviction such as fines paid, dates of the conviction or plea, dates of incarceration (including release date), and dates of probation or parole. Each incident must be evaluated under the above guidelines and the character analysis must consider the totality of all of the information concerning guilty pleas and convictions. If the crime is a felony and of significant moral turpitude, even if it does not involve business integrity, the firm may be declined.
 - (2) Failure to disclose criminal arrests or convictions on SBA Form 912. If an applicant concern or one of its principals fails to disclose a criminal arrest or conviction contained on the FBI identification records obtained by the OPS, the BOS must provide the applicant with the opportunity to explain the reason for the lack of disclosure under Department of Justice regulations concerning use of FBI identification records. *See* 28 CFR §

50.12. The explanation must be evaluated on a case-by-case basis. A determination that the explanation is not adequate provides a basis for finding lack of good character for submitting a false statement to SBA as discussed above, and a referral to the OIG.

- (3) Investigations. The mere fact that an applicant concern or a principal is under investigation does not mean that it lacks character. However, depending upon the stage of the investigation, facts tending to show that the concern or one of its principals committed fraud or another wrongful act along with other information may serve as a basis for finding that the applicant or principal has engaged in a pattern of improper behavior.
NOTE: Approval must be obtained from the OIG, Investigations Division, prior to discussing any investigative issues with an applicant or any of the principals or representatives of the applicant concern.
- d. Other Referrals to the OIG. If during the processing of an application, adverse information is obtained from the applicant or a credible source regarding possible criminal conduct by the applicant or any of its principals, SBA may refer the application to SBA's OIG for review.
- (1) In general, the CODS should continue normal processing of the application unless contacted by an SBA OIG representative requesting suspension of processing in writing. CODS personnel should not attempt to conduct their own investigation, unless the SBA OIG provides consent to do so in writing.
 - (2) If SBA does not hear back from OIG within 45 days, SBA may coordinate with OIG a suitable date to recommence the processing of the application.
 - (3) The AA/BD may consider any findings of the OIG when evaluating the application.
- e. Once an individual has used his/her disadvantaged status or a firm has participated in the 8(a) BD program, neither the individual nor firm will be eligible again.
- (1) Individuals claiming disadvantaged status will, if SBA approves the application, be deemed to have participated in the 8(a) BD program. Use of eligibility will take effect on the date SBA approves the application.
 - (2) Individuals using their disadvantaged status for one firm will be deemed to be non-disadvantaged for the purposes of another applicant/Participant.

Eligibility criteria regarding non-disadvantaged individuals at 13 CFR §§ 124.105 and 124.106 will apply.

- (3) A concern will be ineligible if at least 50 percent of its assets are the same as those of a former 8(a) Participant firm.
- f. Wholesalers are eligible for participation in the 8(a) BD program. A wholesaler is a firm that purchases goods from a manufacturer and then sells them to a customer. Although wholesalers are similar to brokers in that they do not actually produce the goods they provide, wholesalers do take ownership of the goods or handle them with their own equipment or facilities. Wholesalers applying for participation in the program do not need to demonstrate that they can satisfy the requirements of the nonmanufacturer rule for their primary industry classification. Wholesalers need not sell to the general public to be eligible for program admission or program services. However, to be considered a wholesaler, the firm should sell to someone independent of the firm on a regular basis.
- g. Brokers are not eligible for participation in the 8(a) BD program. A broker is a firm that acts as an intermediary between a procuring agency and a supplier. Brokers do not add any value to the items they arrange for others to supply to a procuring agency or do not take ownership or possession of the items or do not handle the items with their own equipment or facilities. *See* 13 CFR § 124.108(d). To determine whether a firm is a broker, the BOS should consider the following:
 - (1) Does the firm carry inventory and is this inventory reported on the firm's balance sheets?
 - (2) Where does the firm store its inventory? Does it have a warehouse?
 - (3) Do the firm's income statements reflect freight and shipping expenses?
 - (4) Does the firm have vehicles, equipment, etc. to handle and deliver the products?
- h. If an applicant concern or any of its principals fails to pay significant financial obligations owed to the Federal government (including Federal taxes, Federal student loans and any other Federally-backed loans), the firm is ineligible for the program.
 - (1) Although closely linked with character, the failure to pay federal obligations is technically not treated as an element of good character under

SBA regulations and must be cited independently of good character as a basis for decline of an application.

- (2) If the applicant concern or any principal has a past due Federal debt, the BOS should request a copy of the approved installment agreement or repayment plan for the debt. Additionally, the BOS should request documentation (such as cancelled checks, monthly statements, bank statements, etc.) to verify compliance with the payment terms of the installment agreement or repayment plan. If the concern or principal is unable to submit evidence of an approved installment agreement or repayment plan, as well as compliance with the payment terms, the concern will be declined.

14. Are Businesses Owned by Indian Tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs) Eligible for Participation in the 8(a) BD Program?

Small businesses owned by ANCs, Indian tribes, NHOs and CDCs are eligible for participation in the 8(a) BD Program. SBA does not consider an individual involved in the management of an entity-owned concern to have used his or her one-time individual eligibility. In addition, a variety of other special eligibility rules apply in cases involving applicant concerns that are owned by these types of organizations. *See* 13 CFR §§ 124.109 (Indian Tribes and ANCs), 124.110 (NHOs) and 124.111 (CDCs).

15. Are There Special Eligibility Rules Apply to Concerns Owned by Indian Tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations?

Yes. Concerns owned by Indian Tribes, ANCs, NHOs, and CDCs are subject to the same eligibility requirements as other concerns except to the extent that those requirements are inconsistent with 13 CFR §§ 124.109 (Indian Tribes and ANCs), 124.110 (NHOs) and 124.111 (CDCs). Further, in several instances, concerns owned by these special entities are subject to additional eligibility requirements.

16. What Are the Special Eligibility Rules that Apply to Concerns Owned by Indian Tribes?

- a. **Size.** The size of firm owned by an Indian tribe is determined independently without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally-owned business

concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within a national industry category.

b. Social Disadvantage.

- (1) Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. 13 CFR § 124.3.
- (2) The BOS must verify that the tribe is Federally or state recognized. If so, the tribe is considered socially disadvantaged.

c. Economic Disadvantage.

- (1) Indian Tribes must submit documentation of economic disadvantage as detailed at 13 CFR § 124.109(b)(2). The BOS must ensure the tribe provides all the required information regarding the tribe's economic condition. Such information may include:
 - (2) The number of tribal members.
 - (3) The present tribal unemployment rate.
 - (4) The per capita income of tribal members, excluding judgment awards.
 - (5) The percentage of the local Indian population below the poverty level.
 - (6) The tribe's access to capital.
 - (7) The tribal assets as disclosed in a current tribal financial statement. The statement must list all assets including those which are encumbered or held in trust, but the status of those encumbered or in trust must be clearly delineated.
 - (8) A list of all wholly or partially owned tribal enterprises or affiliates and the primary industry classification of each. The list must also specify the members of the tribe who manage or control such enterprises by serving as officers or directors.
 - (9) The information provided can be internal data (maintained by the tribe) or data from the U.S. Census Bureau.
- (10) Once an Indian Tribe establishes it is economically disadvantaged for one tribally-owned firm, the Tribe does not need to reestablish such status for

other businesses that it owns seeking certification, unless required by the AA/BD.

d. Ownership.

- (1) The BOS should review the documentation outlining ownership of the firm as applicable to the legal structure (e.g., partnership agreement, operating agreement, stock certificates, stock register, or similar documentation permitted by tribal law). The firm must be at least 51 percent unconditionally owned by the Tribe (or a wholly owned business entity of the Tribe).
- (2) For corporate entities, a Tribe must unconditionally own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, a Tribe must unconditionally own at least a 51 percent interest.
- (3) A Tribe cannot own the firm through multiple levels of subsidiaries, unless the firm is majority owned by a holding company which is wholly-owned by a Section 17 corporation (a federally chartered tribal corporation incorporated under Section 17 of the Indian Reorganization Act, 25 U.S.C. § 461, *et seq.*). This is because a Section 17 corporation is an entity that is an arm of the tribe and thus treated as the tribe itself.

e. Acquisitions. A Tribe can acquire an existing company and have that company apply for the program. However, the BOS must review whether the acquisition was an arm's length transaction. Factors to consider:

- (1) Purchase price – How was the price calculated?
- (2) Consideration paid – Does the consideration paid have a reasonable relationship to an objective valuation or appraisal of the company?
- (3) Terms of purchase (if financed) – What are the payment terms? Is payment triggered by some independent event not controlled by the holder of the note?
- (4) Compliance with payment terms of the purchase/sale agreement and/or promissory note – Are the required payments being made?

f. Restrictions.

- (1) A Tribe may not own 51 percent or more of another concern which, either at the time of application or within the previous two years, operates or operated in the 8(a) BD program under the same primary NAICS code as

the applicant. For the purposes of this paragraph, the same primary NAICS code means the same six digit NAICS code having the same corresponding size standard.

- (2) The BOS should refer to the list of subsidiary companies owned by the Tribe. The BOS should review the primary NAICS code of each company that is a current Participant or previous Participant within the previous two years and assess whether the applicant firm operates under the same primary NAICS code. NOTE: In order for a firm to change its primary NAICS code, it must demonstrate that that the majority of its total revenues during a three-year period evolved from one NAICS code to another. 13 CFR § 124.3. As such, if SBA changes a current Participant's primary NAICS code, that firm is not considered to have operated in its former primary NAICS code within the previous two years.

g. Control.

- (1) The management and daily business operations of a Tribally-owned concern must be controlled by the Tribe. The Tribally-owned concern may be controlled by the Tribe through one or more individuals who possess sufficient management experience of an extent and complexity needed to run the concern, or through management.
- (2) Management may be provided by committees, teams, or Boards of Directors which are controlled by one or more members of an economically disadvantaged tribe.
- (3) The BOS should review the tribal enrollment cards.
- (4) The individuals do not have to be enrolled members of the economically disadvantaged tribe that owns the concern; they can be enrolled members of another economically disadvantaged tribe.
- (5) Management may be provided by non-Tribal members if the concern can demonstrate that the Tribe can hire and fire those individuals, that it will retain control of all management decisions common to boards of directors, including strategic planning, budget approval, and the employment and compensation of officers, and that a written management development plan exists which shows how Tribal members will develop managerial skills sufficient to manage the concern or similar Tribally-owned concerns in the future.

- (6) The BOS should ensure the plan is detailed, such as identifying tribal members who will eventually hold management positions, timelines for training, and how training will allow for management of the firm by tribal members. SBA will evaluate it according to the provisions outlined in 13 CFR § 124.109(c)(4)(i).
 - (7) Members of the management team, business committee members, officers, and directors are precluded from engaging in any outside employment or other business interests which conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan. This is not intended to preclude participation in tribal or other activities which do not interfere with such individual's responsibilities in the operation of the applicant concern.
 - (8) Does the governing document clearly identify who will manage the day-to-day operations of the business (e.g., CEO, President, General Manager, etc.)?
 - (9) Who is the day-to-day manager of the business? Did the firm submit meeting minutes, resolutions, etc. verifying the election or appointment of this individual?
 - (10) Does this individual have any outside employment or business interests which conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan?
 - (11) Is the day-to-day manager of the business involved in the day-to-day management of another 8(a) Participant? Note that individual(s) responsible for the management and daily operations of a tribally-owned firm cannot manage more than two Program Participants at the same time.
- h. Potential for Success.
- (1) There are three methods for a company owned by an Indian Tribe to establish potential for success. The company needs to meet potential for success through **only one** of these methods:
 - (2) The applicant firm has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD program certification. The BOS must review the tax returns, if applicable; or

- (3) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant firm has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant firm has adequate capital to sustain its operations and carry out its business plan as a Participant. The BOS must review the resume of day-to-day manager, licenses, contract performance documentation, business financial statements, tax returns, credit/bonding information, etc.; or
- (4) The Indian Tribe has made a firm written commitment to support the operations of the applicant firm and must show that it has the financial capacity to do so. The BOS must review the letter of support from the Indian Tribe. The BOS must also review the business financial statements of the Tribe to ensure it has the financial capacity to support the applicant firm.
- (5) NOTE: Despite these special rules for satisfying potential for success, the terms of 13 CFR §§ 124.107(e) and (f) governing requisite licensing and buy support also apply to tribally-owned firms.
 - i. Character. Except for the tribe itself, the concern's officers, directors, and all shareholders owning 20 percent or more must demonstrate good character. Additionally, the day-to-day manager of the concern must demonstrate good character. *See* 13 CFR § 124.109(c)(7)(ii).
 - j. Other Special Eligibility Rules for Indian Tribes.
 - (1) Tribal existence: An Indian Tribe must submit all governing documents such as its constitution or business charter, evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or its state of residence, copies of its articles of incorporation and bylaws as filed with the organizing or chartering authority, or similar documents needed to establish and govern a non-corporate legal entity.
 - (2) Sue and be sued clause: The concern owned by an Indian Tribe must have a "sue and be sued" clause in its Articles of Incorporation, Articles of Organization, or Partnership Agreement. This clause must be directly incorporated in the organizational documents, it cannot be an addendum to the organizational documents. There may not be any conditions or limitations on the "sue and be sued" clause.

- k. Level of Contract Support. Please refer to Paragraph 12 – “How Does the BOS Determine If an Applicant Satisfies the Potential for Success Requirement?” of this Chapter regarding assessment of contract support.
- l. One Time Eligibility.
 - (1) An individual involved in the management or daily business operations of a concern owned by an Indian Tribe is not deemed to have used his or her individual eligibility within the meaning of 13 CFR § 124.108(b).
 - (2) A concern will be ineligible if at least 50 percent of its assets are the same as those of a former 8(a) Participant firm.
 - (3) Firms changing their business form (e.g., changing from a sole proprietorship to a corporation) and transferring their assets and liabilities to the new organization may do so without affecting the eligibility of the new organization, if the previous business is dissolved, and all other eligibility criteria has been met.
 - (4) In this case the new organization may complete the program term of the old organization. The request for the change of business form will be treated in accordance with 13 CFR § 124.105(i).
- m. Wholesalers and Brokers. Please refer to Paragraph 13 – “How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character and Other Eligibility Requirements?” of this Chapter regarding the assessment of wholesalers and brokers.
- n. Unpaid Federal Financial Obligations. Please refer to Paragraph 13 – “How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character and Other Eligibility Requirements?” of this Chapter regarding the assessment of unpaid federal financial obligations.

17. What Are the Special Eligibility Rules that Apply to Concerns Owned by Alaska Native Corporations?

- a. Size. The size of the firm is determined independently without regard to its affiliation with the ANC, any entity of the ANC government, or any other business enterprise owned by the ANC, unless the Administrator determines that one or more such ANC-owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within a national industry category.
- b. Social Disadvantage.

- (1) An Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (ANCSA), as amended (43 U.S.C. 1601, *et seq.*).
 - (2) The BOS must verify that the ANC's Articles of Incorporation state it was organized pursuant to the ANCSA. If so, it is considered socially disadvantaged.
- c. Economic Disadvantage.
- (1) An ANC is deemed economically disadvantaged and does not to establish economic disadvantage if Alaska Natives and descendants of Natives own a majority of both the total equity in the ANC and the total voting powers to elect directors of the ANC through holdings of settlement common stock.
 - (2) The BOS should review the ANC's Articles of Incorporation to ensure it was organized pursuant to ANCSA.
- d. Ownership.
- (1) The BOS should review the documentation outlining ownership of the firm as applicable to the legal structure (e.g., partnership agreement, operating agreement, stock certificates, stock register, etc.). The firm must be at least 51 percent unconditionally owned by the ANC (or a wholly owned business entity of such ANC).
 - (2) An ANC can own the firm through multiple levels of subsidiaries. For example, a firm is majority owned by a holding company, which is in turn wholly owned by a holding company that is wholly owned by an ANC.
- e. Acquisitions. An ANC can acquire an existing company and have that company apply for the program. However, the BOS must review whether the acquisition was an arm's length transaction. Factors to consider:
- (1) Purchase price – How was the price calculated?
 - (2) Consideration paid – Does the consideration paid have a reasonable relationship to an objective valuation or appraisal of the company?
 - (3) Terms of purchase (if financed) – What are the payment terms? Is payment triggered by some independent event not controlled by the holder of the note?

- (4) Compliance with payment terms of the purchase/sale agreement and/or promissory note – Are the required payments being made?
- f. Restrictions.
- (1) An ANC may not own 51 percent or more of another concern which, either at the time of application or within the previous two years, operates or operated in the 8(a) BD program under the same primary NAICS code as the applicant. For the purposes of this paragraph, the same primary NAICS code means the same six digit NAICS code having the same corresponding size standard.
 - (2) The BOS should refer to the list of subsidiary companies owned by the ANC. The BOS should review the primary NAICS code of each company that is a current Participant or previous Participant within the previous two years and assess whether the applicant firm operates under the same primary NAICS code. NOTE: In order for a firm to change its primary NAICS code, it must demonstrate that that the majority of its total revenues during a three-year period evolved from one NAICS code to another. 13 CFR § 124.3. As such, if SBA changes a current Participant's primary NAICS code, that firm is not considered to have operated in its former primary NAICS code within the previous two years.
- g. Control.
- (1) A firm which is majority owned by an ANC shall be deemed to be both owned and controlled by Alaska Natives. Thus, a concern owned by an ANC is deemed to be controlled by the ANC when ownership requirements are met. The BOS must review the following:
 - (2) Does the governing document clearly identify who will manage the day-to-day operations of the business (e.g., CEO, President, General Manager, etc.)?
 - (3) Who is the day-to-day manager of the business? Did the firm submit documentation (e.g., meeting minutes, resolutions, etc.) verifying the election or appointment of this individual?
 - (4) Does the day-to-day manager devote full-time to the business? Does this individual have any outside employment or business interests which conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan?

- (5) Is the day-to-day manager of the business involved in the day-to-day management of more than one current 8(a) Participants?
- h. Potential for Success.
- (1) There are three methods for a company owned by an ANC to establish potential for success. The company needs to meet potential for success through **only one** of these methods:
- (i) The applicant firm has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD program certification. The BOS must review the tax returns, if applicable; or
 - (ii) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant firm has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant firm has adequate capital to sustain its operations and carry out its business plan as a Participant. The BOS must review the resume of day-to-day manager, licenses, contract performance documentation, business financial statements, tax returns, credit/bonding information, etc.; or
 - (iii) The ANC has made a firm written commitment to support the operations of the applicant firm and must show that it has the financial capacity to do so. The BOS must review the letter of support from the ANC. The BOS must also review the business financial statements of the ANC to ensure the ANC has the financial capacity to support the applicant.
- (2) NOTE: Despite these special rules for satisfying potential for success, the terms of 13 CFR §§ 124.107(e) and (f) governing requisite licensing and buy support also apply to ANC-owned firms.
- i. Character. Except for the ANC itself, the concern's officers, directors, and all shareholders owning 20 percent or more must demonstrate good character.

Additionally, the day-to-day manager of the concern must demonstrate good character. *See* 13 CFR § 124.109(c)(7)(ii).

- j. Level of Contract Support. Please refer to Paragraph 12 – “How Does the BOS Determine If an Applicant Satisfies the Potential for Success Requirement?” of this Chapter regarding assessment of contract support.
- k. One Time Eligibility.
 - (1) Once a firm has participated in the 8(a) BD program, the firm will not be eligible again.
 - (2) However, an individual involved in the management or daily business operations of a concern owned by an ANC is not deemed to have used his or her individual eligibility within the meaning of 13 CFR § 124.108(b).
 - (3) A concern will be ineligible if at least 50 percent of its assets are the same as those of a former 8(a) Participant firm.
 - (4) Firms changing their business form (e.g., changing from a sole proprietorship to a corporation) and transferring their assets and liabilities to the new organization may do so without affecting the eligibility of the new organization, if the previous business is dissolved, and all other eligibility criteria has been met.
 - (5) In this case the new organization may complete the program term of the old organization. The request for the change of business form will be treated in accordance with 13 CFR § 124.105(i).
- l. Wholesalers and Brokers. Please refer to Paragraph 13– “How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character and Other Eligibility Requirements?” of this Chapter regarding the assessment of wholesalers and brokers.
- m. Unpaid Federal Financial Obligations. Please refer to Paragraph 13– “How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character and Other Eligibility Requirements?” of this Chapter regarding the assessment of unpaid federal financial obligations.

18. What Are the Special Eligibility Rules that Apply to Concerns Owned by Native Hawaiian Organizations?

- a. Size. The size of the firm is determined independently without regard to its affiliation with the NHO or any other business enterprise owned by the NHO,

unless the Administrator determines that one or more such NHO-owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within a national industry category.

b. Social Disadvantage.

- (1) A qualified NHO is deemed to be socially disadvantaged. A qualified NHO is any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians
- (2) The BOS should verify that the NHO's Articles of Incorporation were filed with the State of Hawaii and identify the NHO as a non-profit corporation.
- (3) The BOS must review the NHO's Articles of Incorporation and corporate bylaws to determine whether it has members. If it has members, then at least 51 percent of the members have to be Native Hawaiian. If the NHO has no members, then a majority of the members of the board of directors must be Native Hawaiian. If there are members and a board of directors, only a majority of the members must be Native Hawaiian.
- (4) By definition, a Native Hawaiian is any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii. For SBA review purposes, SBA relies on birth certificates to determine Native Hawaiian heritage. The birth certificate should identify the individual's parent/grandparent/etc. as Hawaiian, Part-Hawaiian, Caucasian Hawaiian, Korean Hawaiian, etc. Alternatively, SBA can accept a registration card from the Office of Hawaiian Affairs as evidence of Native Hawaiian heritage.
- (5) The BOS must also review the NHO's Articles of Incorporation and corporate bylaws to determine the number of directors on its Board and whether at least 51 percent of the NHO's Board of Directors is Native Hawaiian.
- (6) The NHO must have a detailed plan that shows how revenue earned by the NHO will principally benefit Native Hawaiians. The BOS must review the plan submitted by the NHO to ensure it is detailed (e.g., identifies the specific programs, scholarships, activities, etc.). The BOS should ensure the plan outlines how the NHO will achieve the goals it enumerates and how its revenues will be allocated to each goal. Although the NHO's

Articles of Incorporation may identify the benefits Native Hawaiians will receive, this information must be included in the NHO's bylaws.

c. Economic Disadvantage.

- (1) In order to establish that an NHO is economically disadvantaged, it must demonstrate that it will principally benefit economically disadvantaged Native Hawaiians. To do this, the NHO must provide data showing the economic condition of the Native Hawaiian community that it intends to serve, including:
 - (a) The number of Native Hawaiians in the community that the NHO intends to serve;
 - (b) The present Native Hawaiian unemployment rate of those individuals;
 - (c) The per capita income of those Native Hawaiians, excluding judgment awards;
 - (d) The percentage of those Native Hawaiians below the poverty level; and
 - (e) The access to capital of those Native Hawaiians. The NHO itself must establish it is economically disadvantaged.
- (2) Once the NHO establishes that it is economically disadvantaged in connection with the application for one NHO-owned firm, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) BD program participation, unless specifically requested to do so by the AA/BD. If a different NHO identifies that it will serve and benefit the same Native Hawaiian community as the NHO that has already established its economic disadvantage status, that NHO need not establish its economic disadvantage status in connection with an 8(a) BD application of a business concern that it owns, unless specifically requested to do so by the AA/BD.

d. Ownership.

- (1) The BOS should review the documentation outlining ownership of the firm as applicable to the legal structure (e.g., partnership agreement, operating agreement, stock certificates, stock register, etc.). The firm must be at least 51 percent unconditionally owned by the NHO.
- (2) The NHO must directly own the firm. The NHO cannot own the firm through a subsidiary.

- e. Acquisitions. An NHO can acquire an existing company and have that company apply for the program. However, the BOS must review whether the acquisition was an arm's length transaction. Factors to consider:
- (1) Purchase price – How was the price calculated?
 - (2) Consideration paid – Does the consideration paid have a reasonable relationship to an objective valuation or appraisal of the company?
 - (3) Terms of purchase (if financed) – What are the payment terms? Is payment triggered by some independent event not controlled by the holder of the note?
 - (4) Compliance with payment terms of the purchase/sale agreement and/or promissory note – Are the required payments being made?
- f. Restrictions.
- (1) An NHO may not own 51 percent or more of another concern which, either at the time of application or within the previous two years, operates or operated in the 8(a) BD program under the same primary NAICS code as the applicant. For the purposes of this paragraph, the same primary NAICS code means the same six digit NAICS code having the same corresponding size standard.
 - (2) The BOS should refer the list of subsidiary companies owned by the NHO. The BOS should review the primary NAICS code of each company that is a current Participant or previous Participant within the previous two years and assess whether the applicant firm operates under the same primary NAICS code. NOTE: In order for a firm to change its primary NAICS code, it must demonstrate that the majority of its total revenues during a three-year period evolved from one NAICS code to another. 13 CFR § 124.3. As such, if SBA changes a current Participant's primary NAICS code, that firm is not considered to have operated in its former primary NAICS code within the previous two years.
- g. Control.
- (1) The NHO must control the firm's board of directors, manager(s), etc. The BOS should review the governing documents to assess the NHO's control.
 - (2) The NHO's members (or directors if there are no members) must have managerial experience of the extent and complexity needed to run the company. Management experience need not be related to the same or similar industry as the primary classification of the applicant or

Participant. The BOS should review the resumes to determine the experience of the members (or directors). Please refer to Paragraph 11 – “How Does the BOS Determine Whether the Applicant Concern Satisfies the Control of Day-to-Day Management and Administration of Business Operations Requirements?” of this Chapter regarding assessment of managerial experience.

- (3) The individual responsible for daily management of company does not need to be socially and economically disadvantaged, but the NHO must have the ability to hire and fire this individual. The BOS should review the governing documents to determine whether the NHO has this ability.
 - (4) The individual responsible for day-to-day management must devote full-time to the company. The BOS should review the individual’s resume and most recent personal Federal tax return to determine if he/she has any outside employment or business interests. If so, the BOS needs to review the information regarding his/her number of hours per week and official work schedule (including days and times) at the outside employment or business interest.
- h. Potential for Success.
- (1) There are three methods for a company owned by an NHO to establish potential for success. The company needs to meet potential for success through **only one** of these methods:
 - (i) The applicant firm has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD program certification. The BOS must review the tax returns, if applicable; or
 - (ii) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant firm has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant firm has adequate capital to sustain its operations and carry out its business plan as a Participant. The BOS must review the resume of day-to-day manager, licenses, contract

performance documentation, business financial statements, tax returns, credit/bonding information, etc.; or

(iii) The NHO has made a firm written commitment to support the operations of the applicant firm and must show that it has the financial capacity to do so. The BOS must review the letter of support from the NHO. The BOS must also review the business financial statements of the NHO to ensure it has the financial capacity to support the applicant.

- (2) NOTE: Despite these special rules for satisfying potential for success, the terms of 13 CFR §§ 124.107(e) and (f) governing requisite licensing and buy support also apply to NHO-owned firms.
- i. Character. The concern, all principals of the concern, and all principals of the NHO must possess good character.
 - j. Level of Contract Support. Please refer to Paragraph 12 – “How Does the BOS Determine If an Applicant Satisfies the Potential for Success Requirement?” of this Chapter regarding assessment of contract support.
 - k. One Time Eligibility
 - (1) Once a firm has participated in the 8(a) BD program, the firm will not be eligible again.
 - (2) However, an individual involved in the management or daily business operations of a concern owned by a NHO is not deemed to have used his or her individual eligibility within the meaning of 13 CFR § 124.108(b).
 - (3) A concern will be ineligible if at least 50 percent of its assets are the same as those of a former 8(a) Participant firm.
 - (4) Firms changing their business form (e.g., changing from sole proprietorship to a corporation) and transferring their assets and liabilities to the new organization may do so without affecting the eligibility of the new organization, if the previous business is dissolved, and all other eligibility criteria has been met.
 - (5) In this case the new organization may complete the program term of the old organization. The request for the change of business form will be treated in accordance with 13 CFR § 124.105(i).
 - l. Wholesalers and Brokers. Please refer to Paragraph 13 – “How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character

and Other Eligibility Requirements?” of this Chapter regarding the assessment of wholesalers and brokers.

- m. Unpaid Federal Financial Obligations. Please refer to Paragraph 13 – “How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character and Other Eligibility Requirements?” of this Chapter regarding the assessment of unpaid federal financial obligations.

19. What Are the Special Eligibility Rules that Apply to Concerns Owned by Community Development Corporations (Which Has Received Financial Assistance Under U.S. Department of Health and Human Services Under 42 U.S.C. 9805, *et seq*)?

- a. Size. The size of the firm is determined independently without regard to its affiliation with the CDC or any other business enterprise owned by the CDC, unless the Administrator determines that one or more such CDC-owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within a national industry category.
- b. Verification of CDC.
 - (1) The BOS must consider whether the CDC meets the definition of a CDC set forth in 13 CFR 124.3.
 - (2) A CDC is a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805, *et seq*.
 - (3) The BOS should verify that the CDC’s Articles of Incorporation identify it as a non-profit corporation.
 - (4) The BOS should review the documentation submitted by the CDC to prove it has received financial assistance under 42 U.S.C. 9805, *et seq*. The documentation, such as grant award documentation, must clearly indicate the CDC received financial assistance under that particular subchapter of the United States Code
- c. Ownership. The BOS should review the documentation outlining ownership of the firm as applicable to the legal structure (e.g., partnership agreement, operating agreement, stock certificates, stock register, etc.). The firm must be at least 51 percent unconditionally owned by a CDC (or a wholly owned business entity of a CDC).

- d. Acquisitions. A CDC can acquire an existing company and have that company apply for the program. However, the BOS must review whether the acquisition was an arm's length transaction. Factors to consider:
- (1) Purchase price – How was the price calculated?
 - (2) Consideration paid – Does the consideration paid have a reasonable relationship to an objective valuation or appraisal of the company?
 - (3) Terms of purchase (if financed) – What are the payment terms? Is payment triggered by some independent event not controlled by the holder of the note?
 - (4) Compliance with payment terms of the purchase/sale agreement and/or promissory note – Are the required payments being made?
- e. Restrictions.
- (1) A CDC may not own 51 percent or more of another concern which, either at the time of application or within the previous two years, operates or operated in the 8(a) BD program under the same primary NAICS code as the applicant. For the purposes of this paragraph, the same primary NAICS code means the same six digit NAICS code having the same corresponding size standard.
 - (2) The BOS should refer to the list of other companies owned by the CDC. The BOS should review the primary NAICS code of each company that is a current Participant or previous Participant within the previous two years and assess whether the applicant firm operates under the same primary NAICS code. NOTE: In order for a firm to change its primary NAICS code, it must demonstrate that the majority of its total revenues during a three-year period evolved from one NAICS code to another. 13 CFR § 124.3. As such, if SBA changes a current Participant's primary NAICS code, that firm is not considered to have operated in its former primary NAICS code within the previous two years.
- f. Control. A firm which is majority owned by a CDC (or a wholly owned business entity of a CDC) is considered to be controlled by such CDC. The BOS must also review the following:
- (1) Does the governing document clearly identify who will manage the day-to-day operations of the business (e.g., CEO, President, General Manager, etc.)?

- (2) Who is the day-to-day manager of the business? Did the firm submit documentation (e.g., meeting minutes, resolutions, etc.) verifying the election or appointment of this individual?
 - (3) Does the day-to-day manager devote full-time to the business? Does this individual have any outside employment or business interests? If so, the BOS must review documentation regarding the number of hours per week and official work schedule (including days and times) at the outside employment or business interest.
- g. Potential for Success.
- (1) There are three methods for a company owned by a CDC to establish potential for success. The company needs to meet potential for success through **only one** of these methods:
 - (i) The applicant firm has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD program certification. The BOS must review the tax returns, if applicable; or
 - (ii) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant firm has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant firm has adequate capital to sustain its operations and carry out its business plan as a Participant. The BOS must review the resume of day-to-day manager, licenses, contract performance documentation, business financial statements, tax returns, credit/bonding information, etc.; or
 - (iii) The CDC has made a firm written commitment to support the operations of the applicant firm and must show that it has the financial capacity to do so. The BOS must review the letter of support from the CDC. The BOS must also review the business financial statements of the CDC to ensure it has the financial capacity to support the applicant.

- (2) NOTE: Despite these special rules for satisfying potential for success, the terms of 13 CFR §§ 124.107(e) and (f) governing requisite licensing and buy support also apply to ANC-owned firms.
- h. Character. The concern and all its principals including the CDC's principals must have good character.
- i. Level of Contract Support. Please refer to Paragraph 12 – “How Does the BOS Determine If an Applicant Satisfies the Potential for Success Requirement?” of this Chapter regarding assessment of contract support.
- j. One Time Eligibility.
- (1) Once a firm has participated in the 8(a) BD program, the firm will not be eligible again.
- (2) However, an individual involved in the management or daily business operations of a concern owned by a CDC is not deemed to have used his or her individual eligibility within the meaning of 13 CFR § 124.108(b).
- (3) A concern will be ineligible if at least 50 percent of its assets are the same as those of a former 8(a) Participant firm.
- (4) Firms changing their business form (e.g., changing from a sole proprietorship to a corporation) and transferring their assets and liabilities to the new organization may do so without affecting the eligibility of the new organization, if the previous business is dissolved and all other eligibility criteria has been met.
- (5) In this case the new organization may complete the program term of the old organization. The request for the change of business form will be treated in accordance with 13 CFR § 124.105(i).
- k. Wholesalers and Brokers. Please refer to Paragraph 13 – “How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character and Other Eligibility Requirements?” of this Chapter regarding the assessment of wholesalers and brokers.
- l. Unpaid Federal Financial Obligations. Please refer to Paragraph 13 – “How Does the BOS Determine If the Applicant Concern and Its Principals Meet the Good Character and Other Eligibility Requirements?” of this Chapter regarding the assessment of unpaid federal financial obligations.

20. In Determining Whether an Applicant Firm Is Eligible for Participation in the 8(a) BD Program, Does SBA Consider Changes to the Firm's Status That Occur During the Review Process?

- a. SBA determines an applicant firm's program eligibility by examining its status as of the date the AA/BD issues a decision. SBA bases its decision on the facts set forth in the application and related forms, documents, information received in response to the CODS's request for information/clarification, and any changes in circumstances or an applicant's status occurring after the firm submits its application when these changes adversely affect the firm's program eligibility. *See* 13 CFR § 124.204(d).
- b. SBA will also take into account all changes, whether they adversely affect eligibility or not. For example, if a disadvantaged individual owned 51 percent of a company at the time of application and his/her ownership changed to 55 percent during the application processing stage, SBA would take this into consideration and request information/documentation regarding this change, even though it may not adversely affect eligibility.

CHAPTER 2E: APPLICATION PROCESSING – RECONSIDERATION AND APPEAL OF PROGRAM ELIGIBILITY DECISIONS

1. What Is Reconsideration?

- a. Every applicant that is denied admission to the 8(a) BD program has the right to request that the AA/BD reconsider his or her initial decline decision.
- b. If an applicant chooses to exercise this right, it must submit a written request for reconsideration within 45 calendar days of its receipt of written notice that its application was declined.
- c. As part of the reconsideration request, the applicant must include all additional information and documentation necessary to overcome the reason(s) for the initial decline decision. *See* 13 CFR § 124.205.

2. Who Is Responsible for Processing Requests for Reconsideration?

- a. The BOS in the San Francisco or Philadelphia CODS serving the territory where the applicant's principal place of business is located reviews (processes) a request for reconsideration, except for firms owned by ANCs.
- b. The San Francisco CODS reviews all requests for reconsideration by ANC-owned concerns regardless of where the concern is located.

3. How Long Does SBA Have to Review (Process) a Request for Reconsideration?

- a. The SBA has 45 calendar days after receiving a request for reconsideration to process the request and issue a decision letter either reversing or sustaining the initial decline decision.
- b. This 45 day period includes processing times for the CODS, the D/OCE, the OGC, and the AA/BD.
- c. NOTE: The processing time will be suspended if an applicant is referred to OIG and/or the appropriate Area Office for a formal size determination.

4. What Role Does the Chief of the CODS Play in the Reconsideration Process?

- a. When the CODS receives a request for reconsideration, the BOS who processed the initial application is assigned to review the additional information and documentation submitted by the applicant.

- b. After the BOS has finished reviewing the request for reconsideration, the BOS will submit the case file, the BOS Analysis, and a draft decision letter to the Chief for review. The BOS will also transmit electronic copies of the BOS Analysis and the draft decision letter to the CODS Chief.
- c. The application package must clearly present the recommendations and identify any noteworthy issues or concerns.
- d. The Chief will examine each section of the BOS Analysis and draft decision letter to verify that the BOS has taken all required steps and properly applied all regulations.
- e. After the Chief completes this examination, he or she will return the case file and attachments to the BOS along with any applicable comments and recommendations.

5. What Happens After the Reviewing BOS Receives the Reconsideration Back From the Chief?

- a. After receiving the Chief's comments, the BOS will make any changes/corrections to the BOS Analysis and/or draft decision letter requested by the Chief.
- b. After the BOS Analysis and draft decision letter have been cleared by the CODS Chief, the Chief will sign and return the case file to the processing BOS. The CODS Chief makes the final recommendation in the electronic application system and sends to OGC or D/OCE, as applicable.
- c. The hard copy of the request for reconsideration remains in the CODS, unless requested by the D/OCE, OGC, or the AA/BD where applicable.

6. When Is a Legal Review Required for a Reconsideration Request?

- a. A legal sufficiency review is not required if a decline is based in whole or in part on non-appealable grounds (i.e., grounds other than social disadvantage, economic disadvantage, ownership or control).
- b. A legal sufficiency review is required if a decline is based solely on appealable grounds (i.e., social disadvantage, economic disadvantage, ownership or control).
- c. Legal review is not required on approvals except on those applications where the individual(s) is/are claiming social disadvantage based on preponderance of

the evidence (not a designated group member). Legal review is also required on applications involving Indian Tribes, ANCs, NHOs, and CDCs.

- d. In all other cases, the CODS and OCE have the discretion to seek legal review of proposed decisions on applications or related documentation.
- e. The request for a legal review does not extend the time frames for review by the CODS, D/OCE, and the AA/BD.

7. What Is Needed for Legal Sufficiency Review?

If legal review of the case is required or desired, the CODS BOS will submit the file to the OGC. The transmission of an application package to OGC for legal review does not stop the processing clock.

8. Who Is Responsible for Making the Final Determination as to Whether an Applicant Submitting a Reconsideration Request Is Eligible for Participation in the 8(a) BD Program?

- a. The ultimate responsibility and authority for deciding whether to accept or decline a reconsideration request rests with the AA/BD. The AA/BD has 3 working days to make a decision to approve or reject the reconsideration request.
- b. Although the AA/BD may draw upon policy, staff recommendations and legal opinions presented by Counsel when making his or her decision, decision-making authority over 8(a) BD program reconsideration requests is vested solely in the AA/BD.
- c. On reconsideration, the AA/BD may approve the application, deny it on the same grounds as the original decision, or deny it on new grounds. However, if the AA/BD declines the application based solely on new grounds that were not raised in the initial decision, the applicant has the right to submit a second request for reconsideration. If a new reason for decline exists and at least one of the prior reasons for decline has not been overcome, the applicant will not be given an additional request for reconsideration.
- d. Once the AA/BD has made his or her decision regarding the reconsideration request, he or she signs the decision letter and issues it to the firm.
- e. The decline letter must clearly explain the reason(s) for decline, including a direct reference to those provisions of the regulations that the applicant has failed to satisfy. If the applicant has appeal rights, the letter must also inform

the applicant of its right to appeal the AA/BD's decision to OHA and describe the procedures the applicant must follow in order to exercise this right.

9. What Does the OCE Do After Receiving the AA/BD's Decision on Reconsideration?

- a. If the reconsideration has been approved, an approval letter along with the Participation Agreement is sent electronically to the applicant.
- b. The approval letter must instruct the applicant to immediately sign and return one copy of the Participation Agreement to the DO where the applicant's principal place of business is located and keep a copy for their own records.
- c. The CODS will attach the approval letter to the 8(a) application file and forward the file to the appropriate servicing DO.
- d. If the request for reconsideration has been declined and the applicant has a right to submit an appeal to OHA, the OCE must send the decline letter to the applicant by a delivery method that tracks delivery and provides return receipt capability, along with OHA appeal instructions.
- e. If the request for reconsideration is declined and the applicant has no appeal rights, the final decline letter must be sent by a delivery method that tracks delivery and provides return receipt capability.
- f. When the AA/BD rejects an 8(a) application, a copy of the decline letter will be sent to the appropriate universal mailbox of the DO servicing the area where the applicant's principal place of business is located. This will allow the DO the opportunity to assist the applicants with addressing the reasons noted for declining the application.

10. Can an Applicant That Has Been Denied Admission to the 8(a) BD Program on Reconsideration Appeal That Decline Decision?

- a. If an applicant concern has been declined admission to the 8(a) BD program on reconsideration due to its failure to meet the social disadvantage, economic disadvantage, ownership, or control eligibility criteria, it may appeal the AA/BD's decision to OHA.
- b. If the firm's reconsideration request has been declined (either in whole or in part) on the basis of its failure to satisfy any other eligibility requirement, it does not have the right to appeal that decision to OHA. *See* 13 CFR §§ 124.206 and 134.405.

11. Must an Applicant Request Reconsideration Before it Files an Appeal?

- a. An applicant may appeal a decision of the AA/BD declining its application immediately after being notified of that decision.
- b. An applicant is not required to first request reconsideration before filing an appeal petition with OHA.
- c. If an applicant does choose to request reconsideration following an initial decline decision and is declined a second time, it may appeal that decision (See Paragraph 10 – “Can an Applicant That Has Been Denied Admission to the 8(a) BD Program on Reconsideration Appeal That Decline Decision?” above for an exception).
- d. However, an applicant cannot simultaneously request reconsideration and file an OHA appeal and cannot request reconsideration after OHA has ruled on its appeal petition.
- e. If an applicant has the right to file an appeal petition but chooses not to do so, then the AA/BD’s decision is the final agency decision on the matter.
- f. If an applicant does appeal the AA/BD’s decline decision to OHA, OHA’s ruling is the final agency decision on the matter.

12. How Long Does an Applicant Have to Appeal a Decline Decision?

If an applicant chooses to appeal a decline decision of the AA/ BD, it must submit its appeal petition within 45 calendar days of its receipt of written notice that its reconsideration was declined.

13. Can an Applicant Who Has Been Denied Admission to the 8(a) BD Program Resubmit Its Application?

If a firm has had its application or reconsideration request for participation in the 8(a) BD program declined, it may submit a new application. However, a declined firm must wait at least 12 months from the date of the final Agency decision before reapplying.

CHAPTER 3: SERVICING THE PARTICIPANT

- 1. What Happens after a Firm Is Approved for Participation in the 8(a) BD Program?**
 - a. Once the AA/BD approves an application, the OCE will assign a case number to the applicant's file through the Certification Tracking System (CTS), forward the file to the servicing DO, and send a copy of the CTS memorandum to the processing CODS.
 - b. Upon receipt of a firm's file, the DDD, LBOS, or LBOS will:
 - (1) Assign a BOS to the firm;
 - (2) Ensure that application and approval information is correctly entered into the 8(a) electronic application system; and
 - (3) Send the firm a letter congratulating it on its approval along with the SBA Form 1010C (minimum requirements for business plan submission).

- 2. What Assistance Does SBA Provide to Participants?**
 - a. Participants receive primary assistance through the BOS, Resource Partners (SCORE, PTAC, SBDC) and SBA website which includes the following training:
 - (1) Developing and maintaining business plans
 - (2) Seeking loans
 - (3) Accounting and bookkeeping
 - (4) Marketing
 - (5) Management practices
 - (6) Equity and debt financing
 - (7) Obtaining surety bonds
 - b. Additionally, SBA performs analysis and reports on the general causes of success and/or failure of 8(a) BD Participants.

- 3. What Are the BOS's Responsibilities in Servicing the Participant?**
 - a. The BOS's on-going responsibility is to assist the Participant in developing its business to the fullest extent possible so that it attains competitive viability

during its program participation term, and maintains viability thereafter. To do this, the BOS must:

- (1) Help the owner of the firm identify the company's strengths and weaknesses;
 - (2) Provide basic advice, counsel and guidance in the areas of marketing to the federal government, prime contracting, and contract administration;
 - (3) Refer the firm to appropriate internal and external resources for assistance in technical, management and financial matters; and
 - (4) Monitor the firm's progress in the program and its compliance with program requirements.
- b. Specifically, the BOS will:
- (1) Schedule and conduct an orientation session as soon as possible after certification, preferably before the firm prepares and submits its business plan;
 - (2) Request any financial statements, income tax returns and other documents needed to make the file current;
 - (3) Advise the firm that it will not be eligible for 8(a) BD program services until SBA approves its business plan;
 - (4) Notify the firm of the requirement to keep its SAM profile information current;
 - (5) Review whether the firm has developed realistic and attainable objectives in its business plan;
 - (6) Provide assistance and support in the firm's self-marketing efforts;
 - (7) Assess the firm's progress in achieving business plan objectives through periodic independent reviews, discussions and site visits;
 - (8) Complete annual reviews, in compliance with Chapter 5: SBA's Required Reviews on 8(a) BD Program Participants of this SOP;
 - (9) Monitor the firm's success in securing non-8(a) contract opportunities;
 - (10) Assess the firm's need for management and technical assistance. If the firm needs this type of assistance, the BOS will recommend the firm receive such assistance, when the assistance is scheduled to be provided. Assistance is normally available on an annual basis through the 7(j) Management and Technical Assistance (MTA) program. Please see

Chapter 15: 7(j) management and Technical Assistance Program for details on the 7(j) MTA program;

- (11) Initiate search letters and/or requirements letters, as appropriate;
- (12) Facilitate delivery of management and technical assistance by internal and external resources including, but not limited to, 7(j) support; and
- (13) Conduct visits to the firm's physical office location for Business Development and Counseling (called a FIELD Visit) or Compliance and/or Eligibility (called a SITE Visit). :

4. What Is Involved in Providing an Orientation to a New Participant?

- a. The DO will provide an overview of responsibilities and requirements under the 8(a) BD program for the new Participant. Although the orientation may be conducted in a group setting, it should be conducted on an individual basis whenever possible. A completed copy of the checklist, SBA Form 1746, will be provided to the Participant and a copy placed in the Participant's file.
- b. The DO should invite other DO divisions to attend the orientation meeting and answer questions relative to their divisions.

5. What Are the Requirements for Business Plan Submission and Approval?

The Participant must prepare, submit, and obtain SBA's approval of its final business plan before it will be eligible to receive 8(a) contracts. This complete plan must be submitted within 30 days of the firm's orientation session. The BOS may grant the firm one 15-day extension. The firm may submit its business plan using SBA Form 1010C (8(a) Business Plan) or it may use any business plan format it wishes, as long as it contains all of the information required by SBA and is fully completed. Thereafter, the firm must submit any modifications to the plan to its BOS within 30 days after the close of each program year.

6. What If a Firm Does Not Submit its Business Plan On a Timely Basis?

A firm may not be awarded any 8(a) contracts until its business plan is submitted and approved.

7. What Information Must the Firm's Business Plan Include?

- a. To enable SBA to determine the firm's business development needs, the business plan must be comprehensive, setting forth business targets and objectives. Whether the Participant uses the SBA Form 1010C or its own format, at a minimum, the business plan must contain:

- (1) A detailed description of any products currently being produced and any services currently being performed by the concern, as well as any future plans to enter into one or more new markets;
 - (2) The Participant's primary NAICS code and all related NAICS codes;
 - (3) Business targets and objectives including, as necessary, revenues, technical capabilities, etc.;
 - (4) An analysis of market potential, competitive environment, and the concern's prospects for profitable operations during and after its participation in the program;
 - (5) An analysis of the concern's strengths and weaknesses, with particular attention to ways to correct any financial, managerial, technical, or work force conditions that could impede the concern from receiving and performing non-8(a) contracts;
 - (6) Specific targets, objectives, and goals for the business development of the concern during the next two years;
 - (7) Estimates of both 8(a) and non-8(a) contract awards that will be needed to meet its targets, objectives and goals;
 - (8) Succession plan to determine what will happen to the company if something happens to the owner of the 8(a) firm; and
 - (9) Such other information as SBA may require.
- b. The firm will be eligible to perform any 8(a) contract opportunity regardless of whether the NAICS code assigned to the requirement is contained in its approved business plan, so long as it demonstrates the capability and responsibility to perform the contract in question to the procuring agency's contracting officer and so long as it qualifies as a small business under the size standard attached to that NAICS code.

8. How Does the District Office Process the Business Plan?

- a. Within ten calendar days after receipt, the assigned BOS will screen the business plan for completeness. If the business plan is not sufficiently complete to allow a thorough evaluation, it must be returned to the Program Participant, citing the reasons for its return.
- b. Within 30 working days after receipt of a complete business plan, the BOS will evaluate it and advise the Participant in writing of the following:

- (1) Results of the evaluation;
 - (2) Recommendations regarding the improvement and/or implementation of the business plan; and
 - (3) Recommendations regarding program support levels for the current and succeeding program years. Support levels are not to be used as a bar to accepting contract support.
- c. The BOS will use the 8(a) Business Plan Evaluation Form (SBA Form 1714) to evaluate the business plan, identify firm strengths and weaknesses, and analyze plans to improve the firm's management, marketing and financial condition. The form should be completed based on information provided in the business plan. The BOS can help to ensure that an acceptable business plan is submitted by explaining to the participant what is required in the plan.
- d. Each Participant and each business plan is unique; therefore, evaluation of the business plan involves a degree of subjectivity. The form is designed to provide information regarding growth and development of the firm. At one level, the BOS must evaluate the adequacy and clarity of the information provided. At another level, the BOS must evaluate how realistically the business plan reflects where the firm wants to go, and how it expects to get there in terms of marketing, management, and finance. In making this evaluation, the BOS should consider the internal resources of the firm, and assistance that is available from SBA and other resources. Based on the evaluation of the business plan, the BOS should be able to provide guidance to the firm, and, if necessary, arrange for the provision of management and technical assistance.
- e. Inherent in formulating a business plan is the identification of the firm's strengths and weaknesses. The evaluation questions and summary provide a mechanism for assessing strengths and weaknesses. The questions are stated so that the desired answer is "yes." However, "no" answers do not mean that the business plan should not be approved. "No" answers may mean that these are items of concern or indicate weaknesses in one or more of the areas of finance, management and marketing that should be addressed in the summary section. A "no" answer in some cases could indicate that information in a particular section of the business plan is inadequate or unrealistic. In such cases, the BOS should provide feedback to the participant for revising a part of the plan.
- f. The BOS will submit his or her findings and recommendations to the LBOS for approval.

9. How Does the BOS Counsel 8(a) Firms?

- a. The BOS must provide counseling assistance to all 8(a) Participant firms seeking information or help in doing business with the federal government. The BOS will maintain a list of 8(a) Participant firms counseled, which should include the date the assistance was provided, the name of the person counseled and company represented, and a brief description of the counseling session.
- b. Possible topics for the counseling session include:
 - (1) Information on how and where to sell items/services to the Government;
 - (2) Advice and information on arranging meetings with small business specialists, contracting officials, technical personnel, Procurement Center Representatives (PCRs), Commercial Market Representatives (CMRs), and other BOSs;
 - (3) Assistance in acquisition matters such as delays in contract payment, protest procedures, electronic data interchange, contract changes, cases of contract bundling, terminations, cure and show cause notices, inspection and quality control, becoming an “approved” source, and restrictive specifications or clauses;
 - (4) Information concerning the SAM, such as how to register through the Internet, using the network as a marketing tool and as a link to procurement opportunities, and registering firms that do not have access to the Internet;
 - (5) Information on subcontracting opportunities, including providing a list of prime contractors in the DO area;
 - (6) Counseling on all Government contracting assistance, including the Certificate of Competency (COC) program, size determinations, and Surplus Property Sales Assistance;
 - (7) Information on other available SBA assistance; i.e., counseling sources - SBDCs and SCORE; financial assistance (including Surety Bond program); the Small Business Innovative Research (SBIR) program; international trade opportunities; Women-Owned Business initiatives; and the Veterans and Advocacy programs; and
 - (8) Advice on how to report cases of contract bundling on the 8(a) BD program Internet home page or to the assigned PCR.

- c. Counseling sessions may be held with individual firms or with 8(a) groups. They may be held through joint training activities with the contracting activity, SCORE or SBDCs, or at procurement conferences. They may be held together with prime contractors, or may take place at district, city, county, or state offices.

10. How Does the District Office Perform a Field Visit and Site Visit of a Participant?

- a. A DO representative, usually the Participant’s BOS, will meet with each firm in the active portfolio once per fiscal year. An annual meeting may be conducted via onsite, telephone interview or other virtual means if district leadership determines the district office to have resource limitations.
- b. The BOS will discuss with the owner upon whom eligibility is based:
 - (1) The goals in the business plan;
 - (2) The progress made to accomplish the goals in the business plan; and
 - (3) What the SBA can do to help the firm accomplish the goals in the business plan.
- c. The BOS will follow up each meeting with a letter to the firm summarizing the meeting.
- d. If the purpose of the visit is for compliance and eligibility purposes, this is a SITE Visit and the BOS will meet with the owner(s) upon whom eligibility is based and gather the facts and information necessary to make a determination with regard to compliance or eligibility. This meeting must be at the firm’s physical office location. For instance:

	VISITS TO PARTICIPANT FIRMS	
Name of Visit	FIELD Visit	SITE Visit
Purpose	Business Development and Counseling	Compliance and Eligibility
	Orientation – field visit - Once, after approval	Bona Fide Office – site visit - As needed or requested - Must be at firm’s physical

Frequency	<ul style="list-style-type: none"> - May be at DO or other location - Not required at firm’s physical office location, but beneficial 	<ul style="list-style-type: none"> office location - The BOS must also obtain needed information (including documents) and make observations to properly determine whether a bona fide office exists in the geographic location the firm stated. (see Chapter 4D, Contracts – Construction & Bona Fide Offices)
	<p>Annual Field Visit</p> <ul style="list-style-type: none"> - At least one visit per year (depending on DO budget) - Must be at firm’s physical office location 	<p>Determine Servicing Office – site visit</p> <ul style="list-style-type: none"> - As needed or requested - Must be at firm’s physical office location - BOS will obtain needed information (including documents) evidencing the firm’s location
		<p>Eligibility or Compliance – site visit</p> <ul style="list-style-type: none"> - As needed or requested - Can be in conjunction with annual field visit - Whenever a ‘red flag’ is raised - Must be at firm’s physical office location - For any other reason when a compliance or eligibility matter is raised, especially when location might impact eligibility, the BOS must also obtain needed information (including documents) and make observations to determine whether a Participant continues to meet all 8(a) requirements

		See Appendix 3A for Steps to Conducting a Site Visit
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11. What Will a District Office Do If It Receives Evidence That an 8(a) Participant Firm Has Relocated Its Principal Place of Business?

Upon receipt of evidence of an 8(a) Participant firm's relocation of its principal place of business, the BOS, through the LBOS, will send a memorandum with supporting documents to the LBOS serving the geographical area of the firm's new location. The memorandum will request that a site visit be conducted to determine that the firm has in fact relocated its principal place of business to the new location.

12. What Are the Receiving District Office's Responsibilities?

- a. Upon receipt of the request and supporting documents, the receiving DO will arrange a field/site visit.
- b. If DO staff is unable to make the visit, they may use other resources, such as SBDC, SCORE, PCR, etc.
- c. If the receiving DO verifies that the firm has relocated to that District, the receiving DO will send notification to the initiating DO and all files (business development and contract) will be forwarded to the receiving DO.
- d. If relocation is not verified, the receiving DO will notify the initiating DO, which then retains servicing responsibility.

13. What Steps Are Involved in the Final Transfer?

In order to complete the transfer of an 8(a) BD Program Participant from one DO to another, the following actions must be completed:

- a. The files must be forwarded to the receiving DO;
- b. Data in the 8(a) electronic system must be transferred to the receiving DO; and
- c. Any pending program actions must be highlighted for the receiving DO.

CHAPTER 4A: CONTRACTS – GENERAL, PROCESSING REQUIREMENTS

1. Why Are Contract Opportunities Important to the 8(a) BD Program?

SBA uses sole source and competitive 8(a) requirements as a means of supporting the business development and growth of Participants during their nine year program terms.

2. Can 8(a) Contracting Authority Be Delegated to a Procuring Agency?

SBA is authorized to delegate its 8(a) contracting authority to procuring agencies. This delegation is accomplished by negotiating a Partnership Agreement between SBA and the procuring agency. Partnership Agreements are negotiated at the national level, through BD. Procedures for processing requirements under a Partnership Agreement are in Chapter 4C: Contracts – Partnership Agreements.

3. Does Participation in the 8(a) BD Program Guarantee That a Participant Will Receive Contract Opportunities Through the Program?

Admission into the 8(a) BD program does not guarantee that a Participant will receive 8(a) contracts, nor does it guarantee any particular level of contract support. Participants should market their capabilities to the appropriate procuring activities to increase their prospects of receiving sole source 8(a) contracts.

4. How Are Support Levels Used in the 8(a) BD Program?

- a. Participants project levels of 8(a) contract support as part of their business plans. SBA uses support levels as a planning and development tool to help the firm determine the optimal number and dollar amount of 8(a) contracts to maximize the firm's growth and development, without becoming unduly dependent on 8(a) awards.
- b. A firm should be realistic in its annual forecasts of types and dollar amounts of contract support. However, these forecasts are only estimates and will not, by themselves, be used to deny or prevent the award of an 8(a) contract to the firm. Contract support is neither a minimum nor a maximum; it is merely an estimate

5. What Are the DO's Responsibilities for 8(a) Contracting?

The DO is responsible for assisting Participants in seeking, identifying, and accepting or rejecting 8(a) requirements. Accordingly, the DO should do the following:

- a. Maintain on-going contact with appropriate local procuring activity officials to inform them of program goals, policies, and procedures;

- b. Compile and analyze internal statistical data; *e.g.*, percentages of participants with/without contracts, agency patterns of contracting, percentages of contracts under particular NAICS codes, etc. to assist it in requirements management and planning;
- c. Notify the procuring activity of new types of firms in the portfolio to assist in marketing those firms to the activity;
- d. Contact procuring activities to identify and reserve requirements;
- e. Match open requirements to specific 8(a) Participants in the District portfolio considering equitable distribution where appropriate;
- f. Obtain capability statements for 8(a) Participants from their SAM profiles and forward to the appropriate procuring activities;
- g. Arrange for technical assessments of the capability and capacity of client firms to perform on specific requirements;
- h. Prepare necessary correspondence, such as search letters, requirement letters, and acceptance letters to procuring activities;
- i. Prepare, review, and approve Impact Determination, Suitability for 8(a) Contracting, and Contractor Selection Statements, and Requirement and Acceptance Forms; and
- j. Regularly verify Participants' compliance with 8(a) BD program regulations.

6. How Are Requirements Identified?

A requirement may be identified by the BOS, a Procurement Center Representative (PCR), an 8(a) BD Participant, or the procuring activity itself. A PCR residing at or performing liaison responsibilities for a procuring activity is responsible for screening proposed procurements for possible 8(a) contracts in accordance with 13 CFR § 125.2.

7. What Is a Search Letter?

A search letter is a general request from SBA to a procuring activity requesting the activity to identify and reserve requirements to support a particular firm's business plan. The letter outlines the Participant's capabilities and references its SAM profile.

8. What Is a Requirement Letter?

- a. A requirement letter identifies a specific requirement and requests the procuring activity to offer it to the 8(a) BD program. The letter must clearly identify the requirement sought by project name and/or number.
- b. Before sending a requirement letter on behalf of a particular Participant, the BOS should ascertain where and how the firm learned of the requirement, the firm's suitability for the requirement, and its efforts to market the requirement.
- c. If the letter is written on behalf of a specific Participant, it should explain why the firm is suitable for the requirement (*e.g.*, previous contracts for the same or similar supply or service). It should also include a statement that the firm is eligible for the contract and qualified to perform the requirement. If the requirement is for construction, the letter should provide bonding capacity.
- d. If the requirement is to be awarded competitively, the letter should include a statement that at least two 8(a) Participants are considered eligible for and qualified to perform the contract.

9. What Is an Offering Letter?

A procuring activity indicates its intent to award a requirement under the 8(a) BD program by submitting an offering letter to SBA.

10. What Information Must Be Included in an Offering Letter?

Information that must be included in an activity's offering letter is found in 13 CFR § 124.502(c) and the Federal Acquisition Regulations (FAR) 19.804-2.

11. To Which SBA Office Does a Procuring Activity Submit an Offering Letter?

- a. Sole source requirements offered on behalf of a specific Participant ("matched" requirements) must be submitted to the DO servicing that concern.
- b. Competitive requirements and open sole source requirements, except for construction, must be submitted to the DO serving the geographical area in which the procuring activity is located.
- c. All construction requirements must be submitted to the DO serving the geographical area in which the work is to be performed, except for contracts to be performed overseas.

- d. Construction requirements to be performed overseas must be submitted to HQ BD.

12. How May a Procuring Activity Submit Its Offering Letter to SBA?

The procuring activity may submit its offering letter by electronic mail, facsimile transmission, U.S. Mail, or commercial delivery service.

13. What Is an Acceptance Letter?

An acceptance letter is SBA's formal notification that it accepts a requirement into the 8(a) BD program for sole source or competitive award. *See* 13 CFR § 124.503 and FAR 19.804-3. The acceptance letter may be submitted by electronic mail, facsimile transmission, U.S. Mail, or commercial delivery service.

14. What Are the Time Frames for SBA's Acceptance or Rejection of a Requirement?

- a. If the requirement does not exceed the simplified acquisition threshold, SBA may authorize the procuring activity to award the contract without offering the requirement to the relevant DO. In this case, the procuring activity must provide a file copy of any awards to the SBA DO within 5 working days of issuance.
- b. If the requirement is greater than the simplified acquisition threshold, the DO must accept or reject an offering within 5 working days of receipt, or the procuring activity may assume that SBA has accepted it and proceed with the procurement. If the 5-day timeframe cannot be met, SBA may request an extension within 1 working day of receipt.

15. What Are the Time Frames for SBA's Acceptance or Rejection of Requirements Not Offered under a Delegation of 8(a) Contracting Authority (i.e., Partnership Agreement)?

- a. Open sole source and competitive construction requirements to be performed overseas will be processed by OMTA.
- b. OMTA will accept or reject the requirement within 5 working days of receipt if it is being offered by a procuring activity that has a valid Partnership Agreement with SBA delegating contracting authority, and within 10 working days if the requirement is being offered by a procuring activity not having delegated contract execution authority. If these timeframes cannot be met, SBA may request an extension of time within 1 working day of receipt.

- c. If the requirement is competitive, OMTA will also post a notice of acceptance on the 8(a) BD program web site. If the requirement is open sole source, OMTA will notify DOs in order to identify potential qualified Participants.
- d. Based on information submitted by DOs, OMTA will match the requirement with a Participant

16. How Will HQ BD Process Open Sole Source and Competitive Construction Requirements to Be Performed Overseas?

For competitive awards, SBA will accept the requirement on behalf of the 8(a) BD program. For sole source awards, SBA will accept a requirement on behalf of a specific Participant. NOTE: SBA is not required to accept any particular procurement offered to the 8(a) BD program. Only requirements that are consistent with statute, regulation (FAR and 13 CFR Part 124), and policy, and are the best interest of the 8(a) BD program and its Participant(s) may be accepted

17. On Whose Behalf Does SBA Accept a Requirement?

As part of the acceptance process, SBA will verify the appropriateness of the NAICS code assigned by the procuring activity. In general, SBA will accept the NAICS code assigned as long as it is reasonable, even though other NAICS codes may also be reasonable. If SBA and the procuring activity disagree over the NAICS code assigned, the DO should make every effort to resolve the matter through discussion with the procuring activity. If negotiations fail, SBA may reject the requirement, appeal the designation to the head of the procuring agency pursuant to 13 CFR § 124.505, or appeal the NAICS code assigned to OHA. *See* 13 CFR § 124.503(b).

18. How Does SBA Verify a North American Industrial Classification System (NAICS) Code Assigned to the Requirement?

- a. Once SBA determines that a particular requirement is suitable for the 8(a) BD Program, SBA will normally accept the requirement on behalf of the nominated Participant if:
 - (1) The requirement is consistent with the Participant's business plan;
 - (2) The Participant is in compliance with its business activity target (if applicable);
 - (3) The firm is small under the size standard corresponding to the NAICS code assigned to the requirement;
 - (4) The firm meets and is current with all program requirements, including submission of the required financial statements to SBA;

- (5) The firm has not exceeded its 8(a) contracts limits under 13 CFR § 124.519; and
 - (6) The firm is a current Participant on the date of award.
- b. If any of these conditions are not met, SBA will notify the procuring activity and the Participant. The procuring activity may then nominate a different Participant. If the procuring activity does not nominate another Participant, the DO should offer to assist the procuring activity in identifying at least one alternative Participant, regardless of the DO portfolio to which the alternative Participant(s) belongs.

19. How Does SBA Process a Sole Source Requirement for Which the Procuring Activity Nominates a Specific Participant?

For open requirements, SBA may nominate any Participant that is qualified and has a bona fide place of business located in the geographical area serviced by the DO in which all or the majority of the construction is to be performed. *See* Chapter 4D: Contracts – Construction & Bona Fide Offices of this SOP. If no qualified and eligible firm exists in its portfolio, the DO should offer to assist the procuring activity in identifying a pool of potential qualified and eligible firms by reaching out to adjacent Dos.

20. Which Participant Can SBA Nominate for Open Construction Requirements?

The DO may nominate any qualified Participant from its portfolio for an open non-construction requirement. If no qualified and eligible firm exists within the portfolio of the DO that received the offering letter, the office should offer to assist the procuring activity in identifying at least one alternative Participant, regardless of the DO portfolio to which the alternative Participant(s) belongs.

21. Which Participants Can SBA Nominate For Open Non-Construction Requirements?

The responding DO should provide a list of qualified firms and other information, as needed or requested. For each firm this information should include, but not be limited to, business development needs of the firm, compliance with program requirements (including competitive business mix requirements if the firm is in the transitional stage), financial condition, management ability, technical capability, and the effect of the award on equitable distribution of contract opportunities.

22. What Information Does the DO Provide in Response to a Request From Another DO to Identify Potentially Qualified Participants for Open Requirements?

- a. In a formal evaluation, the procuring activity releases a statement of work to one or more Participants. SBA will not authorize formal technical evaluations for sole source 8(a) requirements except for architectural and engineering (A/E) requirements. For requirements other than A/E, if a procuring activity wishes to conduct a formal evaluation of more than one firm, it must request that the requirement be accepted competitively if the requirement is below the competitive threshold. However, approval must be obtained for competition below the threshold prior to acceptance of the requirement. *See* Paragraph 47 – “How Are Requests for Competition below the Competitive Threshold Processed?” of this Chapter).
- b. In an informal evaluation, the procuring activity requests information from several participants to determine their capability to perform a specific requirement. Statements of work may not be released to participants in conjunction with informal evaluations.

23. What Are Formal and Informal Evaluations for Purposes of the 8(a) BD Program?

A procuring activity must submit a new offering letter to SBA if it intends to award a follow-on or repetitive contract as an 8(a) award. This allows SBA to consider the appropriateness of the requirement for the program, whether it should be accepted for sole source or competitive award, eligibility of any nominated concern, and the effect of the award on equitable distribution of contract opportunities. The procuring activity should notify SBA if it does not plan to reoffer the requirement. *See* 13 CFR § 124.503(f).

24. Must a Procuring Activity Offer a Follow-on or Repetitive Requirement to SBA If It Wishes to Award the Successor Contract Under the 8(a) BD Program?

A procuring activity must submit a new offering letter to SBA if it intends to award a follow-on or repetitive contract as an 8(a) award. This allows SBA to consider the appropriateness of the requirement for the program, whether it should be accepted for sole source or competitive award, eligibility of any nominated concern, and the effect of the award on equitable distribution of contract opportunities. The procuring activity should notify SBA if it does not plan to reoffer the requirement. *See* 13 CFR § 124.503(f).

25. How Are Basic Ordering Agreements Treated?

Basic ordering agreements (BOAs) are not contracts. Each task or delivery order issued under a BOA is a separate contract, and is treated as such in the 8(a) BD Program. Therefore, for an

award to be made under a BOA, SBA must first accept the BOA, and then accept each task or delivery order thereunder. If a BOA was awarded on a sole source basis, SBA will not accept any task or delivery order under it if the cumulative value of all the tasks or delivery orders awarded under the BOA, including the order under consideration, would exceed the competitive threshold. *See* 13 CFR § 124.503(g).

26. What Must a Procuring Activity Do If It Anticipates That the Total Value of Task or Deliver Orders to Be Awarded under a BOA Will Exceed the Competitive Threshold?

If it anticipates that the total value of task or delivery orders to be awarded under a BOA will exceed the competitive threshold, the procuring activity must offer the BOA to SBA for competitive award. However, even if the BOA was accepted for competition, each task or delivery order awarded under it must be accepted separately by SBA.

27. Can a Firm Continue to Receive Task or Delivery Orders under a BOA after It Has Exited the 8(a) BD Program?

Because each task or delivery order issued under a BOA is a separate contract, the firm may not receive a task order or delivery order after it has exited the program. This is true whether the BOA was awarded on a sole source or a competitive basis.

28. How Are Task and Delivery Orders Treated under Federal Supply Schedule (FSS) and Multiple Award Contracts?

Both multiple award contracts and FSS contracts, unlike BOAs, are contracts. Task orders and delivery orders issued under multiple award contracts and FSS contracts are not treated as separate contracts. *See* 13 CFR § 124.503(h)

29. Can a Firm Continue to Receive Task or Delivery Orders under a Multiple Award Contract or FSS Contract After It Has Exited the 8(a) BD Program?

- a. Where the Multiple Award Contract is an 8(a) contract: Because task or delivery orders issued under a multiple award contract are not considered separate contracts, the firm may receive a task order or delivery order for an 8(a) contract after it has exited the program provided the contracting officer does not request a new certification as to 8(a) status as part of a new order. *See* 13 CFR § 124.503(h)(2). In addition, for a longer term contract (i.e., one that exceeds five years), a Participant must re-certify its status no more than 120 days prior to the end of the fifth year of the contract. If it has exited the 8(a) program, the firm cannot re-certify itself as an eligible 8(a) concern.

- b. Where the Multiple Award Contract is not an 8(a) contract: A contracting officer may issue an order as an 8(a) award even though the underlying multiple award contract is not an 8(a) contract where the order is offered to and accepted by SBA as an 8(a) award, competed exclusively among eligible 8(a) Participants, and requires that the firm comply with the applicable limitation on subcontracting provisions and/or the non-manufacturer rule, if applicable. Because the order is the first time that 8(a) eligibility is required, a firm must be an eligible Participant at the time of the order.

30. What Circumstances Limit SBA’s Ability to Accept a Procurement for Award as an 8(a) Contract?

SBA will not accept a procurement for award under the 8(a) BD Program if the following circumstances exist (*see* 13 CFR § 124.504):

- a. Prior to offer to the 8(a) BD program, the procuring activity publicly expressed its clear intent, through issuance of a solicitation or otherwise, to award the requirement as a small business set-aside, or use the HUBZone, Service Disabled Veteran-Owned Small Business, or Women-Owned Small Business programs. NOTE: For purposes of this paragraph, conduct of market research by an acquisition activity to determine existence of potential suppliers under any or all of the aforementioned socioeconomic procurement preference programs will not be deemed to constitute a public expression of clear intent to award a requirement under any such program;
- b. Competition occurred prior to acceptance of the requirement into the program;
or
- c. Adverse impact will result from acceptance of the requirement.

31. What Does Competition Prior to Offer and Acceptance Mean and How Does it Affect Acceptance of a Requirement Into the 8(a) BD Program?

An acquisition activity may not award a competitive requirement under 8(a) authority and may not take credit for such an award, if award was made prior to formal acceptance of the requirement into the 8(a) BD program. However, should the procuring activity wish to award the requirement under the 8(a) BD program and receive credit for such award, SBA may accept the requirement for competitive award if the procuring activity agrees to resolicit the requirement using appropriate competitive 8(a) procedures. See 13 CFR § 124.504(b). The fact that SBA accepted a previous procurement into the 8(a) program on a competitive basis does not prevent SBA from accepting a follow-on procurement into the 8(a) program as a sole source procurement

(either where it is offered to SBA on behalf of a Participant owned by a tribe, ANC, NHO or CDC (13 CFR § 124.506(b)) or where a determination has been made that only one Participant is capable of fulfilling the requirement (13 CFR § 124.506(d)).

32. What Does Prior Intent to Use the Small Business Set-Aside, HUBZone, Service Disabled Veteran-Owned Small Business, or Women-Owned Small Business Programs Mean, and How Does it Affect Acceptance into the 8(a) BD Program?

- a. For purposes of the 8(a) BD program, intent to use the Small Business Set-aside, HUBZone, Service Disabled Veteran-Owned Small Business, or Women-Owned Small Business Programs means that the procuring activity issued a solicitation for, or otherwise publicly expressed a clear intent to award a requirement under one of those programs prior to offering the requirement to SBA for award as an 8(a) contract. The AA/BD may permit the acceptance of the requirement, however, under extraordinary circumstances. *See* 13 CFR § 124.504(a).
- b. NOTE: For purposes of this paragraph, conduct of market research by an acquisition activity to determine existence of potential suppliers under any or all of the aforementioned socioeconomic procurement preference programs will not be deemed to constitute a public expression of clear intent to award a requirement under any such program.

33. What Does Adverse Impact Mean, and How Does It Affect Acceptance Into the 8(a) BD Program?

Adverse impact means that SBA has determined that acceptance of the procurement for an 8(a) award could have a detrimental effect on an individual small business, a group of small businesses located in a specific geographical location, or other small business programs. The adverse impact concept is designed to protect small business concerns that are performing contracts awarded outside the 8(a) BD program and does not apply to follow-on or renewal 8(a) acquisitions or to new requirements. SBA will not consider adverse impact with respect to any requirement offered to the 8(a) BD program under Simplified Acquisition Procedures. *See* 13 CFR § 124.504(c).

34. When Will SBA Determine Adverse Impact With Respect to a Specific Small Business?

- a. Adverse impact will be presumed if the following conditions are met:

- (1) The small business has performed the previous requirement for a period of at least 24 months;
 - (2) The small business is performing the previous requirement at the time it is offered to the 8(a) BD program or the performance period for the previous contract ended within 30 calendar days of the date the requirement was offered to the 8(a) BD program; and
 - (3) For a requirement of one year or less, the dollar value of the previous contract was 25 percent or more of its most recent annual gross sales, including those of its affiliates, if any; or for multi-year contracts, the dollar value of the previous contract for the last twelve month period was 25 percent or more of its gross sales, including those of its affiliates.
- b. If adverse impact is found, the requirement will not be accepted into the 8(a) BD program. SBA will make its determination within 15 calendar days of receipt of the offering letter.

35. How Will SBA Determine Adverse Impact With Respect to a Specific Small Business?

To make an adverse impact determination, SBA should obtain a business credit report (BCR) on the incumbent firm. If a BCR is not available, or if there is a question about the accuracy of the BCR data, the DO will instruct the firm to submit SBA Form 355, "Application for Small Business Size Determination." Additionally, SBA may require the incumbent to provide financial statements, employment records, tax returns and any other documentation required to perform an objective review and analysis of the facts. The firm should be advised of the information and documentation required and the date they must be received by SBA. If the incumbent fails to submit the requested data, SBA may find no adverse impact on the small business incumbent. Care must be taken to examine all relevant factors before reaching a determination of adverse impact. The DO may need to request that the procuring activity grant it an extension of time to respond to allow for a comprehensive adverse impact analysis. *See* 13 CFR § 124.504(c).

36. When Will SBA Determine Adverse Impact With Respect to a Group of Small Businesses?

SBA may determine that a combination or consolidation of requirements previously performed by two or more small business concerns into a "new" requirement will have an adverse impact on a group of small businesses if the following conditions are met for at least one of the small firms:

- a. A small business has performed the previous requirement for a period of at least 24 months;
- b. A small business is performing the previous requirement at the time it is offered to the 8(a) BD program or the performance period for the previous contract ended within 30 days of the date the requirement was offered to the 8(a) BD program; and
- c. For a requirement of one year or less, the dollar value of the previous contract was 25 percent or more of its most recent annual gross sales, including those of its affiliates, if any; or for multi-year contracts, the dollar value of the previous contract for the last twelve-month period was 25 percent or more of its gross sales, including those of its affiliates.
- d. If adverse impact is found, the requirement will not be accepted into the 8(a) BD Program.

37. When Will SBA Make an Adverse Impact Determination for Purposes of Small Business Programs?

SBA will determine that a small business program could suffer adverse impact as a result of acceptance of a requirement into the 8(a) BD program if the number and/or value of contracts in the subject industry reserved for 8(a) BD program is disproportionate to the number and/or dollar value of contracts in the subject industry in small business programs. If adverse impact is found, the requirement will not be accepted into the 8(a) BD program.

38. Can Acceptance of a New Requirement Into the 8(a) BD Program Result in Adverse Impact?

Acceptance of a new requirement into the 8(a) BD program cannot result in adverse impact. A “new requirement” is one which has not been previously acquired by the procuring activity. *See* 13 CFR § 124.504(c)(1)(ii).

39. Can Acceptance of a Construction Requirement Into the 8(a) BD Program Result in Adverse Impact?

- a. Generally, acceptance of a construction requirement cannot result in adverse impact since construction requirements, by their very nature, are generally new requirements. *See* 13 CFR § 124.504(c)(1)(ii).

- b. However, recurring indefinite delivery or indefinite quantity (IDIQ) procurements for construction services or construction maintenance are not considered new, and may cause adverse impact to occur.

40. Can Expansion or Modification of an Existing Requirement Result in Adverse Impact?

Expansion or modification of an existing requirement will be considered a new requirement, and thus will not result in adverse impact, if the magnitude of the change is sufficient to result in a price adjustment of at least 25 percent (adjusted for inflation), or requires a different type of capability or work. In determining whether the requirement requires additional or different types of capabilities, SBA will consider all relevant factors, including whether the substance of the work to be performed is sufficiently different from the previous contract to engender a legitimate change of NAICS code. If the NAICS code on the previous contract and the requirement at hand are the same, SBA may consider the relative magnitude of different types of work required under each. If there is significant variance in relative magnitudes, then SBA may find that the requirement is new and will not result in adverse impact. In making this determination, SBA should compare the statement of work (SOW) for the previous contract with the SOW for the requirement at hand and consult with the procuring activity regarding its analysis in assigning NAICS codes to both. *See* 13 CFR § 124.504(c)(1)(ii).

41. When Will SBA Release a Requirement From the 8(a) BD Program?

- a. Once SBA has accepted a sole source 8(a) procurement on behalf of a particular Program Participant, SBA will attempt to retain that requirement in the 8(a) BD Program where the procuring activity is unable to come to an agreement to award an 8(a) contract to the Participant. In such a case, the DO will attempt to match another Participant in its portfolio to the requirement. Where the procuring activity provides convincing information that no other Participant is capable of performing the requirement at a fair price, SBA may withdraw its acceptance and authorize the procuring activity to reprocure through other means.
- b. Where a procurement is awarded as an 8(a) contract, its follow-on or renewable contract must stay in the 8(a) BD program unless the AA/BD agrees to release the requirement for non-8(a) competition.
- c. SBA will release a requirement for formal competition outside the 8(a) BD program only in very limited circumstances. Those circumstances are set forth

in 13 CFR § 124.504(d). In general, for SBA to release a requirement, the business development benefits to the incumbent Participant of releasing the requirement should exceed the business development benefit to the portfolio of accepting the requirement for the program. Only the AA/BD may release a requirement from the program.

42. How Will SBA Release a Requirement From the 8(a) BD Program?

The procedures for processing such a release are as follows:

- a. To the maximum extent practicable, requests should be submitted electronically, via attachment to the OMTA email box at BDManagement&TechnicalAssistance@sba.gov. To improve processing control, they should *not* be emailed directly to the AA/BD or Deputy Associate Administrator for Business Development. Once a request is accepted for processing by OMTA, assigned staff will be identified to the requesting DO.
- b. In the email subject line include: 'Release of Requirement,' followed by the name of the procuring activity, procuring activity requirement number, and/or procuring activity requirement description, if any. The following attachments should be included:
 - (1) The DO's recommendation regarding the request, in PDF and Word format. This document should summarize, analyze, and/or address each of the matters referenced below, and conclude with the DO's recommendation to grant or deny the request. NOTE: OMTA cannot process this action without the recommendation.
 - (2) The procurement activity's request for release of the requirement addressing:
 - (3) The procurement history;
 - (4) A justification for why the release is being sought and the procuring activity's re-procurement strategy for the requirement, including which socio-economic program will be used to acquire the goods and services;
 - (5) NAICS Code assigned to the requirement;
 - (6) Whether the procuring activity has achieved its small disadvantaged business goal;

- (7) Whether the procuring activity is achieving its HUBZone, Service Disabled Veteran-Owned Small Business, Woman-Owned Small Business, and small business goals, as appropriate;
 - (8) The procuring activity's willingness to offer SBA a new requirement to offset the loss of the instant requirement (including description of the requirement, NAICS Code, anticipated dollar amount and date of award and 8(a) award type, competitive or sole source); and
 - (9) The official results of any market research conducted by the procuring activity.
 - (10) A signed copy of the activity's offering letter and SBA's acceptance letter.
- c. Any additional supporting documentation that may affect this requirement will be identified to the requesting DO.

43. When Must an 8(a) Contract Be Awarded on a Competitive Basis?

An 8(a) contract must be awarded competitively if:

- a. There is a reasonable expectation that at least two eligible participants will submit offers at a fair market price; and
- b. The anticipated award price of the contract, including options (*i.e.*, the government estimate of the total value of the contract, including options) will exceed the relevant thresholds found at 13 CFR § 124.506. These thresholds are adjusted on October 1 of years ending in "0," and "5." Accordingly, the thresholds through September 30, 2020 are \$7,000,000 for contracts assigned manufacturing NAICS codes, and \$4,000,000 for all other contracts.

44. Can a Requirement Be Awarded on a Sole Source Basis if the Final Negotiated Price Exceeds the Competitive Threshold?

Where the estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold and the requirement is accepted for sole source award, award may be made even though the negotiated contract price exceeds the competitive threshold, so long as the contract price is not more than 10 percent greater than the competitive threshold. If the contract price exceeds 110 percent of the competitive threshold, it must be re-procured as a competitive 8(a) requirement in order for the requirement to be awarded under 8(a) authority. However, the procuring activity may award the requirement as a sole-source contract, separate and apart from 8(a) authority, under a Justification and Authority (J&A).

45. May a Requirement Be Split to Stay Under the Competitive Threshold?

No, under no circumstances may a requirement be split. If the estimated value of a requirement exceeds the applicable competitive threshold, it may not be divided into several separate procurement actions of smaller amounts to make several sole source awards to a single contractor. *See* 13 CFR 124.506(a)(4).

46. Are Any Firms Exempt from the Competitive Threshold?

- a. Participants owned and controlled by an Indian Tribe or ANC are exempt from competitive thresholds. SBA may accept a sole source requirement in excess of the competitive threshold for tribally-owned concerns and ANC-owned concerns as long as it has not previously accepted the requirement into the program as a competitive procurement.
- b. Participants owned and controlled by an NHO are exempt from competitive thresholds only for Department of Defense (DOD) 8(a) requirements. SBA may accept a sole source requirement in excess of the competitive threshold for NHOs as long as it has not previously accepted the requirement into the program as a competitive procurement.
- c. See 13 CFR § 124.506(b) for additional guidance.

47. How Are Requests for Competition below the Competitive Threshold Processed?

- a. Requests for competition below the competitive threshold must be approved by the AA/BD.
- b. To the maximum extent practicable, requests should be submitted electronically, via attachment to the MTA email address, BDManagement&TechnicalAssistance@sba.gov.
- c. To improve processing control, requests should *not* be emailed directly to the AA/BD or Deputy Associate Administrator for Business Development. Once a request is accepted for processing by OMTA, assigned staff will be identified to the requesting DO.
- d. The subject line of email requests for competition below the competitive threshold should include: 'Competition Below Threshold' followed by the name of the procuring activity, the relevant solicitation number, and/or a brief

acquisition requirement description, if any. The email should also include the following attachments:

- (1) The DO recommendation in PDF and Word formats. This document should summarize, address, and/or analyze each of the matters referenced in subparagraphs 2 – 9, below, and conclude with the DO's recommendation to grant or deny the request. OMTA cannot process the action without this recommendation;
 - (2) The procuring activity's Request for Waiver;
 - (3) The procuring activity's offering letter, in accordance with 13 CFR § 124.502(c);
 - (4) An explanation of the procuring activity's determination that technical competitions are required or that a large number of potential awardees exist, in accordance with 13 CFR § 124.506(c)(1);
 - (5) The procuring activity's written commitment to continue to support the 8(a) BD program on a noncompetitive basis, below the competitive threshold;
 - (6) The procuring activity's two most recent fiscal years of 8(a) contract dollars awarded on a sole source basis;
 - (7) The procuring activity's current fiscal year forecast of contracts to be awarded under the 8(a) BD Program;
 - (8) The result of any market research conducted by the procuring activity;
 - (9) Results of the Dynamic Small Business Search for 8(a) firms that are currently performing under the NAICS Code assigned to the proposed new or follow-on contract action; and
 - (10) The DO's recommendation of 8(a) BD Program Participant(s) deemed qualified to perform under the statement of work.
- e. OMTA will acknowledge receipt of the request within one working day and the AA/MTA will issue a decision to approve or deny the request within 3 working days. *See* 13 CFR § 124.506(c).

48. May SBA Accept Any Requirement Above the Competitive Threshold for Award on a Sole Source Basis?

- a. Other than requirements offered to the 8(a) BD Program on behalf of Participants owned by tribes, ANCs and (with respect to DOD requirements) NHOs, SBA may only accept a requirement for sole source award above the competitive threshold if the AA/BD finds that the nominated firm is the only Participant that is capable of performing the requirement at a fair market price.
- b. If the DO receives such an offer, it must also obtain comprehensive and persuasive information from the procuring activity that demonstrates efforts were made to identify other Participants, and demonstrates why the nominated firm is the only 8(a) BD program source. *See* 13 CFR § 124.506(d). The DO must forward this information and its recommendations to OMTA for processing, per subparagraph 49 – “How Are Requests for Sole Source Award above the Competitive Threshold Processed?”.
- c. Any requirement offered to the 8(a) BD Program as a sole source procurement on behalf of a Participant owned by an Indian tribe, ANC or NHO that exceeds \$22 million must include a statement that the procuring agency has completed a justification and approval in accordance with the requirements of FAR 6.303. SBA will not question and does not need to obtain a copy of the justification and approval, but must merely obtain assurances that it has been done.

49. How are Requests for Sole Source Awards above the Competitive Threshold Processed for Individually Owned Firms?

- a. To the maximum extent practicable, requests should be submitted electronically, via attachment to the OMTA email box at BDManagement&TechnicalAssistance@sba.gov.
- b. To improve processing control, they should *not* be emailed directly to the AA/BD or Deputy Associate Administrator for Business Development. Once a request is accepted for processing by OMTA, assigned staff will be identified to the requesting DO.
- c. In the email subject line include: ‘Sole-source above Threshold,’ followed by the name of the procuring activity, procuring activity requirement number, and/or procuring activity requirement description, if any. The following attachments should be included:

- (1) The DO's recommendation regarding the request in PDF and Word formats. This document should include an eligibility determination for the 8(a) BD Program Participant, summarize/analyze/address each of the matters referenced in subparagraphs 2 - 3 below, and conclude with the DO's recommendation to grant or deny the request. NOTE: OMTA cannot process the action without this recommendation.
- (2) The procuring activity's request for waiver, including: the offering letter, a description of the activity's market research to identify other capable 8(a) BD Program Participants, and justification for the need to sole source the requirement.
- (3) Dynamic Small Business Search results for 8(a) Program Participants performing under the NAICS Code assigned to the proposed new or follow-on contract action.

50. What Procedures Apply to Competitive Requirements?

For competitive 8(a) procurements, procuring activities will conduct competitions among and evaluate offers received from Participants in accordance with 13 CFR § 124.507.

51. How Will SBA Determine Participant Eligibility in Sealed Bid Acquisitions and Negotiated Acquisitions?

- a. In either a negotiated or sealed bid competitive 8(a) acquisition, the procuring activity will request that the SBA DO servicing the apparent successful offeror determine that firm's eligibility for award.
- b. Within 5 working days after receipt of a procuring activity's request for an eligibility determination, SBA will determine whether the firm is eligible for award. Eligibility criteria are found at 13 CFR § 124.507(b)(2).
- c. In sealed bid acquisitions, after the procuring activity has received the bids, it will provide SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (*i.e.*, first low, second low, etc.) with the total evaluated price for each offer, differentiating between base requirements and any options. SBA will consider the eligibility of the first low offeror. If the first low offeror is determined to be not eligible, SBA will consider the eligibility of each next low offeror in order, until an eligible offeror is identified.

- d. In negotiated acquisitions, SBA does not conduct an eligibility review until the procuring activity requests an eligibility determination for the apparent successful offeror..
- e. If the procuring activity contracting officer believes that the apparent successful offeror is not responsible to perform the contract, the matter must be referred to SBA under COC procedures in accordance with 13 CFR § 125.5 and FAR 19.6.

52. Can the 8(a) Eligibility of a Participant Be Questioned With Respect to the Award of an 8(a) Contract?

The 8(a) eligibility of a Participant for a sole source or competitive requirement may not be challenged or protested by another Participant or any other party. Any party with information concerning the eligibility of a Participant to continue participation in the 8(a) BD Program or for purposes of a specific 8(a) contract may submit this information in accordance with 13 CFR §§ 124.112(c) and 124.517.

53. Can the Size of a Participant Be Questioned With Respect to the Award of a Particular 8(a) Contract?

The size status of the apparent successful offeror for a competitive 8(a) procurement may be protested according to 13 CFR § 121.1001(a)(2). The size status of a nominated Participant for a sole source procurement may not be protested by another Participant or any other party. *See* 13 CFR § 124.517(b).

54. Can a Participant Appeal SBA's Decision Not to Award It a Specific Contract?

A Participant may not appeal SBA's determination not to award it a specific contract. However, it may request a formal size determination if SBA found it ineligible for a contract based on size. *See* 13 CFR § 124.517(c).

55. Can the NAICS Code Assigned to a Sole Source Requirement Be Challenged?

The NAICS code assigned to a sole source requirement may not be challenged by another Participant or any other party either to SBA or any administrative forum as part of a bid or

contract protest. Only the AA/BD may appeal a NAICS code designation with respect to a sole source requirement. *See* 13 CFR § 134.302(b); 13 CFR § 124.517(d)(1).

56. Can the NAICS Code Assigned to a Competitive Requirement Be Challenged?

In connection with a competitive procurement, any interested party who has been adversely affected by a NAICS code designation may appeal the designation to SBA's OHA in accordance with 13 CFR Part 134.

57. How Are Requirements for the Defense Fuel Supply Center (DFSC) Processed?

- a. DFSC's Fuel Energy Programs include the following:
 - (1) Direct Delivery (ground fuels, into plane and bunkers);
 - (2) Domestic Bulk (East/Gulf Coast and Inland West Coast); and
 - (3) Alternative Fuels (Natural Gas and Coal).
- b. With the exception of DFSC's coal program, these requirements, which are open, must be synopsisized in FedBizOpps as sources-sought requirements.
- c. When a Participant has responded to the sources-sought synopsis, DFSC will provide the firm with a qualification package that includes criteria necessary to qualify. The firm must provide a copy of its 8(a) BD Program certification letter as part of the qualification package. This package may include, but is not limited to, the information listed in the Defense Logistics Agency and the SBA Partnership Agreement. Based on this information, DFSC will determine specific items that are suitable for 8(a) BD Program reservation.
- d. Upon receipt of notification, DFSC will issue the solicitation directly to the interested Participant. To be considered, the interested Participant must respond to the solicitation. DFSC will evaluate proposals and determine acceptability of the qualification package. Evaluation factors may include supply and transportation commitments and the firm's capability to perform. Should the firm be determined acceptable, DFSC will issue an offering letter on behalf of the Participant to the servicing DO.
- e. Most coal requirements are not open buys. However, for those exceptions where a requirement is open, the offering will be forwarded to the DO having jurisdiction over the location where the work will be performed.

58. Can an Award Be Made to a Firm Whose Program Term Has Expired?

- a) For a sole source 8(a) award, an 8(a) Participant must be an eligible Participant as of the date of award.
- b) For competitive 8(a) requirements, an 8(a) Participant must be an eligible Participant as of the initial date specified for receipt of offers contained in the contract solicitation.
 - 1) The initial date for the receipt of offers is the date that matters. Any amendments to the solicitation made by the procuring activity to extend the date for submission of offers do not affect the date for determining eligibility.
 - 2) For a negotiated procurement, a Participant may submit revised offers, including a best and final offer, and still be awarded a competitive contract if it was eligible as of the initial date specified for the receipt of offers in the solicitation, even though its program term may have expired after that date.

59. How Is a Participant's Size Determined For an 8(a) Contract?

- a. For purposes of 8(a) BD Program sole source requirements, when a size determination is required, the DD that services the Participant, or the AA/BD can request a formal size determination in accordance with 13 CFR 121.402(a).
- b. To determine a Participant's size:
 - (1) The SBA will review the Participant's self-certification and determine if it is small for purposes of that contract, within 30 days of its receipt of a Participant's size self-certification for a particular 8(a) BD contract. The 8(a) BD program follows the regulations at 13 CFR § 121.603 for determining size.
 - (2) The SBA will review the concern's three most recent years of tax returns for revenue-based size standards or examine the average number of individuals employed by the concern over the preceding 12 months for employee-based size standards. Where three most recent years of tax returns are not available for determining the size of a Participant under a revenue-based size standard, SBA will rely on "the concern's regular books of account, audited financial statements, or information contained in

an affidavit by the a person with personal knowledge of the facts.” See 13 CFR §§121.104 and 121.106.

- (3) After SBA verifies that the selected Participant is small under the size standard associated with the NAICS code assigned to the particular procurement, subsequent changes in size up to the date of award, except changes due to merger with or acquisition by another business concern, will not affect the firm’s size status as it relates to that contract. Where a Participant has merged with or been acquired by another business concern between the date of its self-certification and the date of award, the concern must recertify its size status and SBA must verify the new certification before award can occur.
 - (4) The DO may request a formal size determination from the Government Contracting (GC) Area Office serving the geographical area in which the principal office of the selected participant is located whenever the DO cannot verify that the Participant qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement. The DO may request a formal size determination at any time before SBA acceptance of a sole source offer.
 - (5) When a formal size determination is requested by the DO and it is unable to wait for the outcome of formal size determination, the DO can utilize current financial data to determine the firm’s eligibility or deny the sole source offer without receipt of the formal size determination.
- c. The Participant may request a formal size determination from the GC Area Office serving the geographical area in which its principal office is located within 5 working days of its receipt of notice that it is not small for a particular 8(a) contract. Where the Participant does not timely request a formal size determination, SBA may accept the procurement in support of another Participant, or may rescind its acceptance of the offer for the 8(a) BD program.

60. What Types of Contracts Can Be Awarded Under the 8(a) BD Program?

A procuring agency may use the 8(a) BD program to fulfill its needs any time where appropriate, regardless of the place of performance. An 8(a) BD Program contract may be any of the types authorized in FAR Part 16 (*e.g.*, fixed price, cost reimbursement, incentive, indefinite-delivery, time and materials, etc.). SBA will generally not accept requirement contracts (FAR 16.503) and indefinite-quantity contracts (FAR 16.504) unless they contain a guaranteed minimum quantity.

61. What Is a Letter Contract?

A letter contract is a written preliminary contractual instrument that authorizes immediate commencement of contract performance. Letter contracts will be accepted by SBA when issued by the procuring agencies pursuant to FAR 16.603. Letter contracts must be definite at the earliest practicable date, but no later than 180 days after issuance, or before 40 percent of the work is completed, whichever occurs first. SBA will permit letter contracts only at the end of a fiscal year in order to obligate funds before they expire at the end of the fiscal year.

62. What Is the Procurement Package?

The procuring activity will provide SBA with complete information relating to the technical requirements of the proposed procurement including specifications, drawings, delivery or performance schedules, detailed cost estimates, applicable wage determinations, and other pertinent data, together with necessary copies of the solicitation document. This information is sometimes referred to as the procurement package

63. How Are Contract Documents Prepared?

- a. Sole Source Contracts. Upon the conclusion of contract negotiations regarding terms, conditions and price, the procuring activity will prepare the contract documents. The contract must include Special 8(a) Contract Conditions and Special 8(a) Subcontract Conditions as prescribed in FAR 52.219-11 and 52.219-12 respectively. The FAR does not allow for modification of these clauses (*see* FAR 52.104). If the need arises to add additional clauses to the 8(a) prime and/or subcontract documents, they should be negotiated with the interested party(ies) and included in the appropriate award documents.
- b. Competitive 8(a) Contracts. Award will be made through the normal 8(a) award procedures. If the procuring activity prepares the contract in accordance with FAR 19.811-2, the following clause must be negotiated with the procuring activity and included in the award document: "That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the 'Disputes' clause of said subcontract."

64. How Do District Offices Maintain Contract Files?

- a. In the unlikely occurrence that an 8(a) contract is awarded under a tripartite agreement, the 8(a) subcontract must be maintained in accordance with FAR 15.204, Uniform contract format. In addition to the items required under the

uniform contract format, the 8(a) subcontract file must also include the following: a copy of the offering Letter, SBA's acceptance letter, contract award documentation and all modifications.

- b. For contracts awarded pursuant to Partnership Agreements delegating 8(a) contracting authority, Offer and Acceptance Files will be maintained for each 8(a) contract. A self-adhesive identification label will be affixed to the left-hand corner of the rear divider (Part VI) with the name of the company and the contract numbers. On the center face of the file, a large white label will be affixed containing the following typed information:
- (1) Name of the company;
 - (2) SBA contract number; and
 - (3) Procuring agency contract number.
 - (4) Copies of all contractual actions (*i.e.*, contracts, modifications, change orders, delivery orders, task orders, etc.) are necessary documents and should be filed in numerical order.

65. Can Government Furnished Property Be Made Available to Participants?

Government property available to SBA may be furnished to Participants to use in performing 8(a) contracts. This property will be provided on an "as is" basis; *i.e.*, the property is offered in its current condition wherever located. The Participant must determine that the property is suitable for its use and pay for all costs of transporting, installing, modifying, repairing, or otherwise making the property suitable for use. When Government property is furnished by SBA to a Participant, the 8(a) contract will include, or be modified to include, the appropriate Government Property Clause. *See* FAR 45.106. If the clause prescribed in FAR 52.245-2 is used, the risk of loss provision in subsection (g) must be deleted and the risk of loss provisions prescribed in FAR 52.245-2, Alternate I, must be substituted. The clause captioned GOVERNMENT PROPERTY FURNISHED "AS IS", set out at FAR 52.245-19, and must also be included in the subcontract.

66. Are Post-Award Conferences of 8(a) Subcontractors Authorized?

Post-award orientation conferences by procuring activities are authorized by FAR 42.503. SBA should make maximum use of such conferences to ensure that the Participants have a clear understanding of the scope of the work to be performed.

67. What Are the Responsibilities of Contract Administration?

By regulation, SBA has delegated its authority to administer 8(a) contracts to the procuring activity or an activity designated by the procuring activity (*e.g.*, Defense Contract Administration Service). This includes all contract administration functions except the approval of substitution (novation) agreements, and specifically includes determining compliance with the limitations on subcontracting requirements.

68. How Are Assigned Claims Handled?

Participants may assign payments due or those that will become due under an 8(a) contract to a bank, trust company, or other financial institution, including any Federal Lending Agency, pursuant to the “Assignment of Claims” provision of the contract. The assignee must file written notice of any such assignment and a copy of the instrument of assignment with the administering activity, the disbursing officer, and the surety, if any (*see* FAR 32.802). A copy of the fully executed Assignment and Notice of Assignment must be forwarded to the appropriate SBA DO. The administrative contracting officer of the activity administering the contract will acknowledge receipt of the notice to the assignee pursuant to the FAR reference above. Whenever the assignee requests that SBA acknowledge receipt of the notice of assignment, SBA will inform the assignee that the acknowledgment will be done by the administrative contracting officer.

69. How Are Contract Terminations Processed?

- a. Contracts may be terminated for default (T4D) or for the convenience of the Government (T4C) pursuant to the clauses included in the contract. If the Participant experiences difficulties in performing a contract, SBA should attempt to provide the Participant with appropriate management and technical assistance. If the Participant becomes delinquent in the performance of a contract, or in making scheduled deliveries, the Participant should request that the administering activity extend the delivery or performance schedules so as to permit the concern to perform the contract.
- b. Termination for Default (T4D):
 - (1) A decision to T4D a specific 8(a) contract is made by the procuring activity contracting officer in cooperation with the appropriate SBA DO.

- (2) The contracting officer must advise the ADD/8(a)BD in writing in advance of the intent to T4D the contract.
 - (3) The SBA DO may provide the Participant with appropriate management and technical assistance to assist in preventing the T4D and advise the contracting officer of this effort. If the contracting officer believes reasons for termination continue to exist, after consulting with SBA, he or she may terminate the contract for default. SBA will then make efforts to locate another Participant qualified to complete the subcontract. Negotiations will be conducted, as appropriate, with the procuring activity and the alternate Participant. If a qualified alternate Participant cannot be located, or negotiations for completion of the contract cannot be agreed to, the unperformed part of the defaulted contract will be returned to the procuring activity for re-procurement. SBA is not liable for any termination costs or re-procurement costs. However, the defaulted Participant is liable for such costs pursuant to the default clause of the contract. See Chapter 4E: Contracts – Transfers, Substitutions and Waivers, Paragraph 2 – “Can SBA Substitute One 8(a) Participant with Another on an 8(a) Contract?”
 - (4) On bonded contracts, concurrence of the surety must be obtained prior to terminating the initial contract. The replacement Participant must provide bonding for the amount of the new contract.
 - (5) In lieu of a T4D, SBA may request that the procuring activity consider terminating the contract for convenience at no cost to either party.
 - (6) Where a contracting officer demonstrates that an 8(a) contract will otherwise be subjected to a T4D, the Administrator may authorize another Participant to complete performance on the contract and in conjunction with the procuring activity, permit novation of the contract. See 13 CFR § 124.515
- c. Termination for Convenience (T4C):
- (1) In cooperation with SBA, the procuring activity’s contracting officer may T4C an 8(a) contract whenever it is determined to be in the best interest of the Government. The Participant will be entitled to payment by the procuring activity of all reasonable termination costs pursuant to the provisions of the T4C clause contained in the contract.
 - (2) When the owner or owners upon whom 8(a) BD Program eligibility is based relinquish ownership or control of the 8(a) Participant, or enter into

any agreement to relinquish ownership or control in the concern, the Government must T4C the contract unless a waiver is granted by the Administrator in accordance with 13 CFR § 124.515.

CHAPTER 4B: CONTRACTS – SBA APPEALS TO HEADS OF PROCURING AGENCIES

1. Who Can File an SBA Procurement Appeal?

The SBA Administrator has the authority to file an appeal involving a federal procurement to the head of the procuring agency. A proposed appeal is initiated by the DO and processed through OMTA for the recommendation of the AA/BD prior to approval by the Administrator.

2. What Can Be Appealed?

- a. A contracting officer's decision not to make a particular procurement available for award as an 8(a) contract;
- b. A contracting officer's decision to reject a specific Participant for award of an 8(a) contract after SBA's acceptance of the requirement for the program; and
- c. The terms and conditions of a proposed 8(a) contract, including the procuring activity's NAICS code designation and estimate of the fair market price. *See* 13 CFR § 124.505(a).

3. What Are the Procedures for Filing an Appeal?

- a. Upon receipt of a contracting officer's adverse decision, the ADD/8(a)BD (or equivalent) initiates the appeal by filing a Notice of Intent to Appeal with the procuring activity contracting officer.
- b. The Notice of Intent to Appeal must be signed by the ADD/8(a)BD and received by the contracting officer within 5 working days of SBA's receipt of the decision.
- c. A courtesy copy should be forwarded to the Director of the Office of Small Disadvantaged Business Utilization (OSDBU) for the procuring agency and to the D/MTA. To the maximum extent practicable, all courtesy copies of notifications should be submitted to the D/MTA electronically, via attachment to the OMTA email box at BDManagement&TechnicalAssistance@sba.gov.
- d. NOTE: The DO must not file a Notice of Intent to Appeal without first contacting the D/MTA before the Notice is sent to the contracting officer.
- e. A complete appeal package must be submitted to OMTA within two days of issuance of Notice of Intent to the acquisition activity. This ensures that a

complete package is properly prepared for the SBA Administrator's review. See below for contents of a complete Appeal package.

4. When Must the Administrator's Appeal Be Filed?

The Administrator's appeal must be submitted to the head of the procuring agency within 15 working days of SBA's notification of intent to appeal or the appeal may be considered withdrawn. *See* 13 CFR § 124.505(b)(3).

5. Under What Circumstances Should a Notice of Intent to Appeal Be Submitted to the Contracting Officer?

A Notice of Intent may be submitted after the ADD/8(a)BD:

- a. Meets and/or discusses the issue with all parties (*i.e.*, the Participant, cognizant PCR, and the contracting officer) to attempt to resolve the issues;
- b. Obtains all supporting documentation to sustain SBA's position; and
- c. Determines that the appeal has merit and obtains written concurrence from the DD.
- d. Notifies the D/MTA.

6. What Information Must Be Contained in the Notice of Intent to Appeal?

- a. The following information must be contained in the Notice of Intent to Appeal:
 - (1) A statement informing the contracting officer of SBA's intent to file an appeal with a summary of all issues; and
 - (2) A statement requesting that the procuring activity suspend further action regarding the procurement until the head of the agency issues a written decision.
- b. Upon receipt of the Notice of Intent, the procuring activity must suspend further action regarding the procurement until the head of the agency issues a written decision on the appeal, unless the head makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a consideration of the appeal. *See* 13 CFR § 124.505(b)(2).

7. What Information Should be Included in the Appeal Package?

- a. Immediately after the DO files a Notice of Intent to Appeal, the DO must send the complete Appeal Package to the AA/BD, through the D/MTA.
- b. To ensure timely processing, the DO must submit a completed appeal package to the AA/BD, through the D/MTA, within 2 working days of issuing the Notice of Intent to Appeal.
- c. The appeal package must contain:
 - (1) A transmittal memo requesting action on the proposed appeal. The memo must contain the DO's recommendation signed by the DD or designee;
 - (2) A copy of the contracting officer's adverse decision;
 - (3) A copy of all pertinent documentation and information supporting the SBA's position, including a copy of the search letter, statement of work (SOW), identification, dollar amount, and description of the procurement, and the ADD/8(a)BD's findings and determination (this should contain an item by item rebuttal of the contracting officer's decision);
 - (4) Any information from the PCR (e.g., SBA Form 70, "SBA Recommendation");
 - (5) A copy of the Notice of Intent to Appeal; and
 - (6) A draft copy of the proposed appeal to be signed by the Administrator. This should include a specific rebuttal of each reason given by the contracting officer.
- d. The fact that an appeal has been initiated should not restrict the DO from working with the procuring activity to reach an agreement.

CHAPTER 4C: CONTRACTS – PARTNERSHIP AGREEMENTS

1. What Is a Partnership Agreement?

SBA has entered into external agreements, known as Partnership Agreements, with various federal agencies through which the Agency has delegated its authority for 8(a) contracting.

2. Where Can Copies of Executed Partnership Agreements Be Located?

Copies of all executed agreements can be found on www.sba.gov. SBA personnel and procuring activities must refer to the currently executed copy of the Partnership Agreement for full provisions and responsibilities of each procuring activity.

3. How Has SBA Delegated Its 8(a) Contract Authority?

- a. Through executed Partnership Agreements, SBA delegates to the head of the agency, or designee, for redelegation to warranted federal agency contracting officers, the following:
 - (1) SBA's authority under § 8(a)(1)(A) of the Small Business Act to enter into 8(a) prime contracts, and
 - (2) SBA's authority under § 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) BD program Participants.
- b. Generally, a Partnership Agreement provides for the award of both contracts and purchase orders under the provisions of § 8(a) of the Act as implemented by the Federal Acquisition Regulations (FAR) (48 CFR and SBA's 8(a) BD program regulations).
- c. Some agencies with which SBA has entered into Partnership Agreements do not follow the FAR; *e.g.*, Federal Deposit Insurance Corporation.
- d. In accordance with 13 CFR § 124.501(a), SBA delegates only the contract execution function. SBA remains the prime contractor on all 8(a) contracts, and the 8(a) Participant remains SBA's subcontractor.

4. What Are the Objectives of a Partnership Agreement?

- a. To delineate responsibilities as they relate to the oversight, monitoring, and compliance with the procurement laws and regulations governing 8(a) contracts between SBA and the participating procuring agency;

- b. To establish the procedures for offer and acceptance between SBA and the participating procuring agency;
- c. To establish the timeframes when SBA will respond to an offering letter;
- d. To emphasize that SBA only delegates the authority to sign contracts on its behalf, and that SBA remains the prime contractor on all contract awards, modifications, options and purchase orders;
- e. To establish uniform policies and procedures regarding application of contracts and purchase orders to the 8(a) contracting process;
- f. To provide that SBA will, on a quarterly basis, monitor the participating procuring agencies fulfillment of all requirements outlined in the agreement;
- g. To suspend or rescind the delegation of the agreement if the procuring agency violates any terms and conditions of the agreement; and
- h. Refer to the currently executed copy of the Partnership Agreement for complete and specific provisions and responsibilities of the respective procuring activity.

5. How Are Requirements Processed Under Partnership Agreements?

- a. Unless otherwise specified in the Partnership Agreement, the participating procuring agency will:
 - (1) Determine which requirements are suitable for offering to the 8(a) BD program in accordance with FAR subpart 19.8 and, where appropriate, identify, in conjunction with the appropriate SBA servicing offices, 8(a) Participants capable of performing these requirements;
 - (2) Submit the offering letter for a sole source requirement to the SBA's DO responsible for servicing the selected 8(a) Participant, when an 8(a) Participant has been identified;
 - (3) Submit an open offering letter for a sole source requirement to the SBA DO that services the geographical area where the contracting activity is located, when the procuring agency has not identified a specific 8(a) Participant for a requirement;
 - (4) Submit the offering letter for a competitive 8(a) procurement to the SBA DO that services the geographical area where the contracting activity is located, except that offering letters for construction work will be sent to the SBA DO located in the geographical area where the work will be

- performed, or, in the cases of such contracts to be performed overseas, to the SBA HQ;
- (5) Retain responsibility for compliance with all applicable provisions of the FAR and other applicable acquisition regulations, unless a FAR deviation is obtained;
 - (6) Provide a copy of any contract, as defined in FAR 2.101, including basic contracts, orders, modifications, and purchase orders, to the SBA servicing DO within 15 calendar days of the date of award. Failure to timely provide the required documents to the SBA may result in suspension or rescission of the Partnership Agreement;
 - (7) Retain the option to use tripartite procedures to award 8(a) contracts and purchase orders to 8(a) Participants, as specified in FAR Part 19;
 - (8) Ensure that all contracts awarded pursuant to this Partnership Agreement contain provisions that require the SBA's approval of novation agreements submitted by the 8(a) Participant; and require advanced notice to the SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;
 - (9) Ensure the all NAICS codes for all 8(a) contracts comply with FAR 19.102;
 - (10) Ensure that all contracts comply with the appropriate work performance requirements, in accordance with FAR 19.508 and 13 CFR § 124.510;
 - (11) Add language to every contract stating that even though the SBA may not be identified in section A of the contract, it is still the prime contractor on the contract;
 - (12) Ensure that all proposed joint ventures involving 8(a) Participants are approved by SBA before contracts are awarded;
- b. SBA must ensure that agency contracting officers execute a justification and approval when awarding a sole-source contract for over \$20 million; ensure that the justification is approved by the appropriate agency official; and that each justification includes the minimum requirements as outlined under FAR 6.303-2(d):
- (1) A description of the needs of the agency concerned for the matters covered by the contract;

- (2) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract (*see* FAR 19.805-1);
 - (3) A determination that the use of a sole-source contract is in the best interest of the agency concerned;
 - (4) A determination that the anticipated cost of the contract will be fair and reasonable;
 - (5) Such other matters as the head of the agency concerned shall specify for purposes of this section.
- c. Unless otherwise specified in the Partnership Agreement, SBA will review the procuring agency's offering letters, issue acceptance or rejection letters, and make eligibility determinations.
- (1) **Sole Source Procurements.** SBA will issue an acceptance letter or notification of rejecting within 5 working days of receipt of an offering letter. Acceptance must include size verification and determinations with respect to all elements of eligibility (*e.g.*, determinations of adverse impact, NAICS code appropriateness and program eligibility). The SBA determines only 8(a) BD program eligibility and does NOT determine whether the firm can perform on a particular requirement. Absent actual notification of rejection within 5 working days of receipt of the offer, the procuring activity may assume that SBA accepts its offer for the 8(a) BD program. *See* 13 CFR § 124.503(a)(3).
 - (2) **Competitive acquisitions.** SBA will issue an acceptance letter or notification of rejection within 5 working days of receipt of an offering letter. Absent a notification of rejection within 5 working days of receipt of the offer, acceptance may be assumed on the sixth working day. Following receipt of bids, and within 2 working days after a request from the contracting officer, SBA will issue an eligibility determination for the firm with the lowest bid. In the case of a negotiated procurement following receipt of initial offers including price, and within 2 working days after a request from the contracting officer, SBA will issue an eligibility determination for all firms in the competitive range, if discussions are to be conducted. SBA will issue an eligibility determination for all firms with a realistic chance of award within 2 working days after a request from the contracting officer, if no discussions are to be conducted;

- (3) Requirements under the simplified acquisition threshold (FAR 2.101). SBA will review the eligibility of the selected 8(a) Participant within two (2) working days after receipt of a copy of the signed purchase order document. The purchase order document may be delivered by any means acceptable to the SBA District Office. SBA will provide a copy of any negative eligibility determination to the contracting activity and the 8(a) Participant. Absent receipt of a negative eligibility determination from SBA within 2 working days, the 8(a) contractor will be authorized to begin performance. No offering or acceptance letter is required for requirements processed under the simplified acquisition threshold;
- (4) Contract negotiations. SBA will provide 8(a) Participants with assistance in contract negotiations when requested by either the 8(a) Participant or the procuring activity contracting officer; Note: BOS may ask his/her Procurement Center Representative (PCR) POC, or his/her supervisor for assistance.
- (5) Appeal authority. SBA retains its appeal authority in accordance with FAR 19.810;
- (6) Surveillance reviews. SBA retains the right to perform on-site contract surveillance reviews;
- (7) 13 CFR Part 124 compliance. SBA retains the responsibility for determining compliance with all applicable provisions of 13 CFR Part 124, including determining eligibility;
- (8) Open offering letter. SBA selects an appropriate 8(a) Participant when the procuring activity submits an open offering letter for a sole source requirement; and
- (9) Missing award documents. SBA issues a letter to the procuring activity, with a copy to the senior procurement executive during Participant's annual review, identifying accepted requirements for which award documents have not been received by the SBA DO

6. How Are Contracts Executed Under Partnership Agreements?

- a. Under a Partnership Agreement, an 8(a) contract can be awarded directly by the procuring activity through a contract between the procuring activity and the Participant. *See* 13 CFR § 124.508(a)(2).
- b. The cognizant procuring activity contracting officer may make direct award of a contract to the 8(a) Participant after the requirement has been offered to and accepted by SBA. Acquisitions that employ the simplified acquisition procedures authorized by FAR Part 13, limited to the simplified acquisition threshold (FAR 2.101), require no offer or acceptance. Contract execution will be on the appropriate form specified in the FAR or the procuring agency's acquisition regulations. The "Issued by" block will identify the awarding procuring activity office. The SBA DO servicing the 8(a) Participant will be identified in the award document. The 8(a) Participant will be listed as the contractor. The procuring activity is responsible for issuing procurement instrument identification numbers. SBA will not issue subcontract numbers

CHAPTER 4D – CONSTRUCTION & BONA FIDE OFFICES

1. What Is Covered in this Chapter?

- a. This section clarifies what a ‘bona fide place of business’ is and how SBA will make that determination.
- b. This section also clarifies offering and nominating procedures, eligibility determination procedures, and geographical boundary determination procedures for 8(a) construction requirements.

2. What Makes 8(a) Construction Requirements Different?

- a. Section 8(a)(11) of the Small Business Act (15 U.S.C. §637(a)(11)) provides that, to the maximum extent practicable, 8(a) construction requirements should be awarded to an 8(a) Participant firm within the county or State where the work is to be performed.
- b. This statutory provision is intended to promote efficiency and cost-effectiveness in fulfilling construction requirements. Because of the capital intensity of construction projects (i.e., equipment, etc.), costs should be lower the closer the contractor is to the construction project.
- c. SBA’s 8(a) regulations implement this congressional mandate.

3. What Is a Bona Fide Place of Business?

- a. For purposes of 8(a) construction contracts, a Participant must have a ‘bona fide place of business’ within the state (or where a state is served by more than one SBA DO, within the geographical boundaries served by the DO) where the work will be performed.
- b. A ‘bona fide place of business’ means a location where a participant **regularly maintains an office** that employs a least one full-time individual within the appropriate geographical boundary.
- c. Construction trailers or other temporary construction sites are not considered a ‘bona fide place of business’. *See* 13 CFR §124.3

4. Can a Participant’s Principal Place of Business Be Considered a Bona Fide Office?

Yes, a Participant’s ‘principal place of business’ is always a bona fide place of business for purposes of 8(a) construction requirements.

5. Can a Participant Have More Than One Bona Fide Place of Business?

Yes, a Participant may have more than one bona fide place of business so long as each meets the requirements of 13 CFR §124.3.

6. What Does ‘Regularly Maintains an Office’ Mean?

- a. ‘Regularly maintains an office’ means conducting business activities as an on-going business concern from a fixed location on a daily basis. The best evidence of the regular maintenance of an office is documentation that shows that third parties routinely transact business with a Participant at a location within a particular geographical area. Such evidence includes lease agreements, payroll records, advertisements, bills, correspondence, and evidence that the Participant has complied with all local requirements concerning registering, licensing, or filing with the State or County where the place of business is located.
- b. A Participant need not have a construction license issued by the state in which it seeks to establish a bona fide place of business. As such, the relevant district office should not require the firm to include the state-specific construction as part of the documentation it submits as proof that it has a bona fide place of business within the appropriate geographical area.

7. What Does ‘Full-Time Individual’ Mean?

- a. ‘Full-time individual’ means an individual who conducts the business activities of the Participant during normal business hours.
 - (1) The individual may not work for any person or entity other than for the Participant during normal business hours.
 - (2) The term does not include independent contractors.
- b. The BOS can determine the employment of a full-time individual by reviewing the following evidence provided by the Participant;
 - (1) Employment agreements;
 - (2) Payroll records;
 - (3) Tax documentation; and
 - (4) Employee benefit documentation.
- c. NOTE: SBA considers employees obtained from a temporary employee agency, Professional Employee Organization (PEO), or leasing concern as employees of

the Participant. Review includes consideration of the ‘totality of circumstances’ to determine whether they are employees for SBA purposes.

8. How Will SBA Determine Whether a Participant Has a Bona Fide Place of Business in a Designated Geographical Area?

- a. At any time, a servicing DO may submit documentation on behalf of a Participant to another DO (reviewing DO) in an effort to establish that the Participant has a bona fide place of business within the reviewing DO’s geographical area.
- b. In order for a Participant to be eligible to submit an offer for an 8(a) procurement limited to a specific geographic area, it must receive from SBA a determination that it has a bona fide place of business with that area **prior to submitting its offer** for the procurement. The following requirements apply to such requests:
 - (1) In order to apply for a specific competitive solicitation, such documentation must be submitted at least 15 working days before initial offers that include price are due.
 - (2) Within 10 working days of receipt of submission, the reviewing DO will conduct a site visit, if practicable. *See* Chapter 3: Servicing the Participant.
 - (3) Within 5 working days of a site visit, the reviewing office will make a determination whether or not the Participant has a bona fide place of business in its geographical area and issue the appropriate written notification to the Participant’s servicing DO.
 - (4) If the Participant has established that it has a bona fide place of business, then the Participant’s servicing DO will issue a letter to the Participant informing the Participant of the determination.
 - (5) The letter will also state that the Participant must immediately notify the servicing DO of any changes that could affect its bona fide place of business status.
 - (6) The letter is valid as long as there are no material changes to the facts relied on by SBA in making its bona fide place of business determination.
 - (7) For future contracts, a DO may re-evaluate a Participant’s bona fide place of business status at any time, and should consider any information relevant to that issue that it receives from another party.

- (8) If a DO determines that a Participant has not established that it has a bona fide place of business, the DO must submit the determination to the AA/BD, through the D/MTA, for review before the determination is issued. The AA/BD will review the determination as quickly as practicable.
- (9) A Participant has the burden of clearly establishing that it has a bona fide place of business within a designated geographical area.
- (10) If a Participant submits conflicting, vague, or insufficient evidence or documentation, SBA may make a negative determination.
- (11) A Participant may reapply for bona fide place of business status at any time.
- (12) Each bona fide place of business verified by SBA must have its own federal contracting database profile ([www. SAM.gov](http://www.SAM.gov)) specific to that location

9. How Will SBA Determine that the Firm is Eligible for Award?

- a. In either a negotiated or sealed bid competitive 8(a) acquisition, the procuring activity will request that the SBA DO servicing the apparent successful offeror determine that firm's eligibility for award – for both competitive and sole source.
- b. Eligibility determinations are made by the DO that services the apparent successful offeror or the nominated Participant.
- c. Eligibility determinations by the DO include bona fide place of business status for purposes of competitive and open sole source construction requirements.
- d. A servicing DO making an eligibility determination must rely on the bona fide place of business status determination made by the appropriate reviewing DO.
- e. For competitive construction requirements, SBA will determine a Participant's eligibility:
 - (1) As of the date of a Participant's initial offer, which includes price, and
 - (2) Within 5 working days of a procuring activity's request for an eligibility determination.
 - (3) For sole source construction requirements, SBA will determine a Participant's eligibility as of the date SBA accepts the requirement.

- (4) When SBA determines that the apparent successful offeror is ineligible for award, SBA will notify the procuring activity. The procuring activity will then send to SBA the identity of the next highest evaluated firm for an eligibility determination. The process is repeated until SBA determines that an identified offeror is eligible for award

10. Which District Office Must Be Offered Competitive 8(a) Construction Requirements?

- a. Competitive 8(a) construction requirements must be offered to the DO servicing the geographical area where the work is to be performed.
- b. If the work will be performed in more than one area, the requirement will be offered to the DO servicing the geographical area where the majority of the work is to be performed.
- c. The DO must immediately forward the requirement to the AA/BD or designee via the D/MTA so that a geographical determination can be conducted.

11. How Will SBA Determine the Geographical Boundary for a Competitive 8(a) Construction Requirement?

- a. The AA/BD, or designee, will determine whether a competitive 8(a) construction requirement should be competed within the geographical boundaries of one or more SBA DOs, within a state, or within the state and nearby areas.
- b. In establishing a competitive boundary, the AA/BD, through the D/MTA, will consider the number of firms within the DO's portfolio that have the capacity to perform the requirement.
- c. When it appears there would not be a sufficient number of firms to establish competition, the AA/BD will consider expanding the geographical boundaries to ensure competition.
- d. Only those Participants with bona fide places of business within the established geographic boundary are eligible to submit offers.

12. Which District Office Must Be Offered an Open Sole Source Construction Requirement?

Open sole source 8(a) construction requirements must be offered to the DO servicing the geographical area where the work is to be performed.

13. How Will SBA Nominate a Participant for an Open Sole Source Construction Requirement?

- a. For open sole source construction requirements, SBA will nominate only a Participant with its primary or a bona fide place of business located within the appropriate geographical area.
- b. The DO that services the geographical area where the work is to be performed will nominate an eligible Participant from qualified firms located within the geographical boundaries of that DO.
- c. If a qualified Participant or match cannot be found, the DO must refer the requirement to the AA/BD or designee, who has the sole discretion to nominate an eligible Participant. The AA/BD, or designee, will nominate a Participant with a bona fide place of business either within the same state or within a reasonable proximity to where the work is to be performed.

14. Which District Office Must Be Offered Sole Source Construction Requirements When a Procuring Activity Nominates a Specific Firm?

The DO servicing a nominated Participant must be offered the requirement when a procuring activity nominates a specific Participant for a sole source 8(a) construction requirement.

15. How Will SBA Accept a Requirement Where a Procuring Activity Nominates a Specific Participant?

- a. If a nominated Participant is eligible and an appropriate match exists, SBA will accept the requirement on behalf of the Participant.
- b. A nominated Participant is not required to have a bona fide place of business within any geographical boundary relative to where the work will be performed.
- c. If a nominated Participant is not eligible or an appropriate match does not exist, SBA will notify the procuring activity.
- d. The procuring activity may then nominate an alternate Participant, or offer the requirement to SBA as an open sole source or competitive 8(a) requirement.

CHAPTER 4E; CONTRACTS – TRANSFERS, SUBSTITUTIONS, TERMINATIONS, AND WAIVERS

1. Can 8(a) Contracts Be ‘Sold’ or ‘Transferred’?

- a. Contracts awarded under Section 8(a) authority cannot be sold. A Program Participant has no authority to transfer or sell an 8(a) contract of its own volition.
- b. Unless a waiver of termination for the convenience of the government is granted by the Administrator (as discussed below), when an 8(a) contract is transferred or novated for any reason to another firm, the procuring agency must terminate the contract for the convenience of the government.
- c. The Administrator may permit a Participant to transfer its interest in an 8(a) contract without invoking termination for the convenience of the government if at least one of the conditions set forth at 13 CFR § 124.515(b) is met.
- d. Under the 8(a) BD program, SBA, as the prime contractor to a federal procuring activity, awards a subcontract to a Program Participant for performance. SBA has the statutory authority to:
 - (1) Terminate a contract for the convenience of the government;
 - (2) Approve a request for waiver of termination; or
 - (3) Where termination for default is threatened, substitute another eligible 8(a) Participant in conjunction with the procuring agency.

2. What Happens If an 8(a) Contract Is Transferred or Novated to Another Firm?

If an 8(a) contract is transferred or novated to another firm for any reason, the procuring activity must terminate the contract for convenience unless it receives a waiver from the Administrator of SBA. *See* 13 CFR § 124.515(a)(1)(ii).

3. What If Ownership Is Not Transferred, But All the Operating Assets Are Transferred from the 8(a) Participant to Another Participant?

In processing a request for a waiver under this Chapter, SBA will treat a transfer of all a Participant’s operating assets to another Participant the same as the transfer of an ownership interest, provided the Participant that transfers its assets to another eligible Participant that

voluntarily graduates from the 8(a) BD Program; and ceases its business operations, or presents a plan to SBA for its orderly dissolution. *See* 13 CFR § 124.515(f).

4. What Is the Relationship Between Requests for Changes of Ownership and Requests for a Waiver Under This Chapter?

Changes of ownership must be approved by SBA under Chapter 7: Changes – Ownership, Business Structure, Management & Name of this SOP and 13 CFR § 124.105. The change of ownership request must precede the request for waiver if at all possible and, at the very least, must be submitted simultaneously with the request for waiver. The change of ownership request and the waiver request will be coordinated by the appropriate parties (DO, OCE and OMTA).

5. Who Can Transfer or ‘Substitute’ a Contract if a Waiver Has Been Approved?

Only SBA, together with the contracting activity, can transfer or substitute the performance of an 8(a) contract to another Participant. In view of the purposes of the 8(a) BD program, transfer of an 8(a) contract to another concern or non-Participant will only be approved in accordance with the provisions of 13 CFR § 124.515.

6. Can SBA Substitute One 8(a) Participant with Another on an 8(a) Contract?

- a. Where a procuring activity contracting officer demonstrates to SBA that an 8(a) contract will otherwise be terminated for default, SBA may authorize another Participant to complete performance and, in conjunction with the procuring activity, permit novation of the contract without invoking the termination for convenience or waiver provisions of 13 CFR § 124.515. *See also* 13 CFR § 124.518(c).
- b. When an 8(a) Participant defaults under a contract, the procuring activity contracting officer collaborates with the appropriate SBA DO to resolve the issue. *See* Chapter 4A, paragraph 73 “How Are Contract Terminations Processed?”.

7. How Are Substitutions Processed?

- a. Substitutions (contract transfers) must be prepared and executed in accordance with FAR 42.1204 and must be supported by the documentation specified. Substitutions are processed as follows:

- (1) When a substitution is required, SBA will obtain the procuring activity's concurrence to the substitution action. SBA will attempt to locate another qualified and eligible Participant to complete the contract.
 - (2) The servicing DO for the substitute Participant must determine that the Participant has the technical, managerial, and financial capacity required for contract performance, and meets all other eligibility requirements. The DO must then obtain the procuring activity's approval of the proposed substitute.
 - (3) If a qualified and eligible Participant acceptable to the procuring activity is identified, negotiations will be conducted, as appropriate, with the procuring activity and the alternate Participant.
 - (4) If the original and substitute Participants are both serviced by the same DO, the ADD/8(a)BD will approve the substitution with the concurrence of counsel. For substitutions involving Participants from different Districts, the receiving ADD/8(a)BD is the approving official.
- b. Upon approval of the substitution, the DO will take all actions required; *e.g.*, modify the original contract document to reflect the reduction of quantity and cost, set up new contract documents, and if necessary, notify the transferring DO that the contract is fully accounted for in the receiving office.
 - c. If a qualified Participant cannot be identified or negotiations cannot be consummated, SBA should request the procuring activity to consider terminating the contract, and the unperformed part of the defaulted contract will be returned to the procuring activity for re-procurement. SBA is not liable for any re-procurement costs. However, the defaulted Participant is liable for such costs pursuant to the default clause of the contract.

8. What Happens If an 8(a) Participant Is No Longer 51 Percent Owned and Controlled by Disadvantaged Individuals?

- a. If an 8(a) Participant is no longer 51 percent owned and controlled by disadvantaged individuals (except concerns owned by Indian tribes, ANCs, CDCs or NHOs) or if an agreement is entered into which would result in the firm no longer being 51 percent owned and controlled by disadvantaged individuals, the procuring activity must terminate the contract for convenience unless the Administrator of SBA grants a waiver.

- b. Unless a waiver is granted by the Administrator, as soon as SBA learns of such an unauthorized change in ownership, it should consider referring the matter to the OIG.

9. Who Has the Authority to Grant Waivers to the Termination for Convenience Rule and Under What Circumstances?

The Administrator, as a matter of discretion and on a non-delegable basis, may waive the termination requirements if requested to do so by the 8(a) Participant when:

- a. It is necessary for the owner(s) of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing;
- b. Ownership and control of the concern that is performing the contract will pass to another participant, but only if the acquiring firm would otherwise be eligible to receive the award directly as an 8(a) contract;
- c. Any individual upon whom eligibility was based is no longer able to exercise control of the concern due to physical or mental incapacity or death;
- d. The head of the procuring agency, or an official with delegated authority from the agency head, certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions; or
- e. It is necessary for the disadvantaged owner(s) of the initial 8(a) awardee to relinquish ownership of a majority of the voting stock of the concern in order to raise equity capital, but only if:
 - (1) The concern has graduated from the 8(a) BD Program;
 - (2) The disadvantaged owner(s) will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and
 - (3) The disadvantaged owner(s) will maintain control of the daily business operations of the concern. *See* 13 CFR § 124.515(b).

10. When Must the 8(a) Participant Request the Waiver?

The 8(a) Participant must request a waiver in writing prior to the change of ownership and control except in the case of death or incapacity. A request for waiver due to incapacity or death must be submitted within 60 days after such occurrence. *See* 13 CFR § 124.515(c). The Participant must afford the district office a reasonable amount of time to review the request prior

to the change of ownership taking place. A request received the same day as the effective date of the change of ownership is not a reasonable amount of time for review, and should result in the request for waiver being denied.

11. What Information Must Be Contained in the Waiver?

The Participant seeking to change ownership or control must specify the grounds upon which it requests a waiver, and must demonstrate that the proposed transaction would meet such grounds. *See* 13 CFR § 124.515(c).

12. What Actions Will Occur When a Waiver Request Based on the Transfer of Ownership and Control to Another Eligible Program Participant is Received from the Original Participant?

Once a waiver request is received, the DO must determine whether the Participant that will take over ownership and control of the original Participant.:

- a. Is eligible to receive the contract in accordance with 8(a) BD program regulations. *See* 13 CFR §§ 124.515(d) and 124.507(b)(2). In making this determination, SBA looks at the eligibility and ability of the acquiring firm to perform prior to the transfer of ownership and control;
- b. Is a small business under the NAICS code assigned to each contract;
- c. Is in compliance with any applicable competitive business mix target established or remedial measure imposed by 13 CFR § 124.509;
- d. Has a bona fide place of business in the applicable geographic area if the contract is for construction (*see* 13 CFR § 124.507(c)(2));
- e. Has the technical capability and capacity to perform under the assigned NAICS code. Of course, the acquiring firm will have the capability and capacity to perform the contract after ownership and control passes to the acquiring firm. The question is whether the acquiring firm has necessary capability and capacity prior to the transfer of ownership and control;
- f. Has the financial capacity and capability to perform; and
- g. Is approved by the contracting activity.

13. How Is the Waiver Processed?

If all the above conditions are met and the DO believes a waiver is warranted, the DO will draft a recommendation for action by the Administrator.

- a. The BOS for the firm requesting the waiver will:
 - (1) Refer contract eligibility questions to the BOS responsible for the recipient 8(a) Participant.
 - (2) Draft an analysis and recommendation to be reviewed by the ADD/8(a)BD for accuracy and completeness, the District Counsel for legal sufficiency, and the DD for approval and signature. If the receiving Participant is in a different District, the recommendation must include the concurrence of the receiving DO's DD.
 - (3) The completed waiver request, the recommendation of the DD(s), and all supporting documentation, will then be forwarded to the D/OMTA for its recommendation. The D/OMTA will then forward the package to the AA/BD who will review it and forward it to the Administrator with his or her recommendation.
- b. Documentation should include:
 - (1) Certification of impairment and approval for transfer of performance for the contract;
 - (2) Financial analysis for the Participant taking over the contract (transferee) and the effect on the contract, to include, as a minimum cash flow, bonding and financial stability.
 - (3) Confirmation of appropriate contract NAICS code.
 - (4) Determination that the Participant taking over the contract (transferee) is eligible for award of the contract; and
 - (5) A determination that the waiver request complies with 13 CFR § 124.515.
- c. If any of the above parties determines that a waiver should not be granted, such party has the discretion to return it to the requester for additional information or justification or to forward it through the appropriate channels together with a recommendation that the waiver request be denied.

14. How Is the Case Processed If the Administrator Denies the Request for a Waiver?

- a. If the waiver is not granted, the DD must request that the procuring activity terminate the contract for the convenience of the Government.
- b. The Administrator has discretion to decline a request for waiver even though legal authority exists to grant the waiver. *See* 13 CFR §§ 124.515(a) and 124.515(h).

15. Can the Participant Denied the Waiver Appeal the Administrator's Decision?

The 8(a) Participant may appeal SBA's denial of a waiver request by filing a petition with OHA pursuant to 13 CFR Part 134 within 45 days of the date of receipt of the Administrator's decision. *See* 13 CFR § 124.515(i).

CHAPTER 4F: CONTRACTS – SOLE SOURCE

1. Are There Dollar Limits on the Amount of 8(a) BD Contracts That a Participant Can Receive?

- a. Yes, for sole source contracts. A Participant firm may not receive any further sole source 8(a) contract awards when the firm has received a combined total of competitive and sole source 8(a) contracts in excess of the following dollar amounts:
- b. For participants that have a revenue-based primary NAICS code at the time of program entry, the 8(a) contract dollar limit above which it can no longer receive sole source 8(a) contracts is five times the annual receipts size standard corresponding to that NAICS code or \$100,000,000, whichever is less.
- c. For participants that have an employee-based primary NAICS code at the time of program entry, the 8(a) contract dollar limit above which it can no longer receive sole source 8(a) contracts is \$100,000,000.
- d. Both competitive and sole source contracts are counted in determining whether the dollar limits have been reached. *See* 13 CFR § 124.519(a).

2. What Participants Are Subject to These Dollar Limits?

The dollar limits apply to all Participants that entered the program after December 31, 1997, except for participants owned by an Indian tribe, ANC, or NHO. There are no limits on the amount of 8(a) sole source contracts that these entity-owned firms can receive. *See* 13 CFR § 124.519(a).

3. Once the 8(a) Contract Limit Is Exceeded, Is the Participant Eligible for Any Further 8(a) Contracts?

Once the 8(a) contract limit is exceeded, a Participant may not receive any further sole source contracts, but it remains eligible for competitive 8(a) awards.

4. How Will SBA Determine If the Participant Has Reached or Exceeded the Dollar Limitations?

- a. Each DO should have accurate data available on all awards, modifications and options.

- b. The DO can refer to the contract award information contained in GSA’s Federal Procurement Data System (FPDS) along with data reports from the electronic data system where each DO inputs and extracts contract data for 8(a) Participant firms.
- c. To determine if the dollar limit is reached, SBA must combine the total of all 8(a) awards – both competitive and sole source – using the following requirements:
 - (1) SBA will not consider 8(a) contracts awarded under \$100,000. 13 CFR § 124.519(a)(3);
 - (2) SBA must include the dollar value of 8(a) contract options and modifications. 13 CFR § 124.519(c);
 - (3) If an option is not exercised or the contract value is reduced by modification, SBA will deduct those values. 13 CFR § 124.519(c); and
 - (4) A Participant’s eligibility for a sole source award is measured as of the date that the requirement is accepted for the 8(a) BD Program without taking into account whether the value of that award will cause the limit to be exceeded. 13 CFR § 124.519(d).

5. Can the 8(a) Contract Limits Be Waived?

- a. The AA/BD may waive a prohibition on a Participant receiving sole source 8(a) contracts when the head of a procuring activity represents that such award is needed to achieve significant interests of the Government. *See* 13 CFR § 124.519(e).
- b. To the maximum extent practicable, requests for such a waiver should be submitted electronically, via attachment to the OMTA email box at BDManagement&TechnicalAssistance@sba.gov. To improve processing control, they should *not* be emailed directly to the AA/BD or Deputy Associate Administrator for Business Development. Once a request is accepted for processing by OMTA, assigned staff will be identified to the requesting DO.
- c. Waiver of Sole Source Prohibition for Exceeding 8(a) Contract Dollar Limits. In the email subject line include: ‘Waiver of Sole Source Prohibition,’ followed by the name of the Program Participant . The following attachments should be included:

- (1) The DO's recommendation regarding the request for waiver of the sole source prohibition, in PDF and Word formats. This document should summarize, analyze, and/or address each of the matters referenced in subparagraphs 2 - 3 below, and conclude with the DO's recommendation to grant or deny the request. NOTE: OMTA cannot process this action without the recommendation.
- (2) Federal Agency Request for Waiver, which includes:
- (3) Offer Letter, in accordance with 13 CFR § 124.502(c);
- (4) An explanation of the Agency's market research to find other 8(a) BD Program Participants;
- (5) Justification for the need to sole source;
- (6) Concurrence from the head of the procuring activity for award of the sole source; and
- (7) Dynamic Small Business Search (DSBS) results of 8(a) firms performing under the NAICS code assigned to the respective contract.

Chapter 5: SBA's Required Reviews on 8(a) BD Program Participants

1. What are the Contents of Chapter 5?

Chapter 5 is divided into two (2) major subchapters covering SBA's required reviews of 8(a) BD Program Participants

SUBCHAPTER	PURPOSE
5A	Annual Review
5A(i)	Business Plan
5A(ii)	Financial Review
5B	Continuing Eligibility Review
5C	Request for 8(a) Eligibility Waivers

In some instances, the text is nearly duplicative, but this is intentional and necessary for clarity.

2. What Is the Legal Authority?

The Small Business Act and 13 CFR Part 124 establish requirements for 8(a) Participants to provide information annually, and guidelines for review of this information. The submission of financial statements is covered in 13 CFR § 124.602 with additional requirements in 13 CFR § 124.509(c). Submissions regarding annual review and continuing eligibility are covered in 13 CFR §§ 124.112(b) and 124.601. Submissions regarding the business plan are covered in 13 CFR § 124.403.

3. What are the SBA's Required Reviews on 8(a) BD Program Participants?

The SBA's required reviews consist of the following:

- a. Annual reviews conducted by the DO.
 - (1) Financial statement reviews conducted by the District Office during the annual review. Please note, the information required for the financial statement review is submitted by the Participants at the end of its fiscal year.
 - (2) Business plan reviews conducted by the DO during the annual review.

- b. Continuing eligibility reviews conducted by the District Office and OCE.
- c. OCE conducts continuing eligibility review on 8(a) Participant firms that are considered high risk and those that are requested from the field staff.
- d. OCE will use risk based model to determine those 8(a) Participant firms. High Risk Model Criteria:
 - (1) 8(a) Participants with total 8(a) revenues over \$10 million;
 - (2) Joint Ventures;
 - (3) Firms with are party to mentor-protégé agreements;
 - (4) Entity-owned firms (Those owned by ANCs, Tribes, NHOs, and CDCs).
- e. The field staff continues to conduct annual reviews along with continuing eligibility reviews for all those 8(a) Participants that do not fall under the categories identified above.
- f. OCE conducts continuing eligibility review after the annual review has been completed and has a recommendation of retain

4. When are Required Reviews Performed?

The required reviews are conducted annually. The process is initiated 30 days before the end of the Participant's program year. The DO requests via email or other trackable means that their assigned firm submit their Annual Update information to SBA. .

5. When Must the Participant Submit Information for Their Reviews?

The Participant must submit the required information within 30 days after the end of its program year

6. How Is the Required Information Submitted to SBA?

8(a) Participants are encouraged to submit their information electronically. The required information will be shared with OCE as they conduct the firm's continuing eligibility review. Paper documents are also accepted.

Chapter 5A: 8(a) ANNUAL REVIEW

1. When Must the District Office BOS Send the Participant the Annual Review Update Package?

The DO BOS may send the annual review update package as early as 60 days before and no later than 30 days prior to the end of the Participant's program year end date.

2. When Must the Participant Submit Annual Update Information?

The Participant must submit the required information within 30 days after the end of its program year.

3. When Must the DO BOS Complete the Annual, Financial, and Business Plan Reviews?

The DO BOS must complete the annual, financial and business plan reviews within 30 days from the date the DO BOS receives all the required information for the review from the Participant

4. When Is the Annual Review Conducted?

- a. Except for the ninth and final year of an 8(a) Participant's program term, the annual review is conducted within 30 from the date the DO BOS receives all the required annual update information for the annual review from the Participant. A program year begins on the anniversary date of the Participant's acceptance into the 8(a) BD program and ends 1 year from that date. For example, if the Participant's acceptance into the 8(a) BD program was on August 15, 2016 then the annual review would begin on August 15, 2017. . The DO BOS will perform a total of eight (8) annual reviews and an exit evaluation during the Participant's 9-year program term.
- b. SBA will conduct an exit evaluation of the firm and an exit survey with the owner between 30-90 days before the end of the Participant's program term.
 - (1) The exit evaluation will include a summary of services/benefits received by the firm during its program tenure. The evaluation will address: total contracts received, training received, joint venture agreements, mentor-protégé agreements and surplus property.
 - (2) The exit survey will consist of questions to the owner addressing: benefits of the program to the firm, problems experienced during the program term, and recommendations to improve the program.

5. What Information Must Be Requested for the Annual Review?

The Participant must complete and update all the forms in the SBA's 8(a) BD system which includes the following:

- a. SBA Form 1450, Annual Update Review
 - (1) Signed certification, included in SBA Form 1450, stating that the Participant meets program eligibility requirements. 13 CFR § 124.112(b)(1).
 - (2) Annual compensation data, including a record of all payments, compensation and distributions (i.e., loans, advances, salaries and dividends) made by the Participant to each of its owners, officers or directors or to any person or entity affiliated with these individuals. 13 CFR § 124.112(b)(5). *See* SBA Form 1450, Attachment A, Individual Compensation Worksheet.
 - (3) If the Participant is an approved protégé under SBA's Mentor-Protégé program, a narrative report detailing the contacts it has had with its mentor and benefits it has received from the mentor/protégé relationship. 13 CFR § 124.520(f). *See* Form 1450, Attachment B, Mentor/Protégé Worksheet.
 - (4) A report for each 8(a) contract performed during the year explaining how the performance of work requirements are being met for the contract, including any 8(a) contracts performed as a joint venture. In addition, a breakdown report of all contracts that are 8(a) and non-8(a) contracts along with dollar values performed during the year. *See* Form 1450, Attachment C, The 8(a) Contracts Annual Performance worksheet.
 - (5) The Participant's annual contract award forecast for the coming year. 13 CFR § 124.403(b). The contract forecast is included in SBA Form 1450, 8(a) Annual Update.
 - (6) A transition management plan for Participants either entering or already in the transitional stage. 13 CFR § 124.403(c). The Transition Management Strategy is included in SBA Form 1450, 8(a) Annual Update.
- b. SBA Form 1010, 8(a) BD Program Application. Participants will need to review and make any necessary changes or updates.
- c. SBA Form 1010-IND, 8(a) BD Program Application Individual Information. This form needs to be completed/updated by all individuals claiming

- disadvantaged status, all individuals owning 10 percent or more, all officers, all directors, all managing partners, all managing members.
- d. SBA Form 1623, Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.
 - e. SBA Form 1790, Representatives Used and Compensation Paid for Services in Connection with Obtaining Federal Contracts.
 - (1) The Participant must submit semi-annually a written report to its servicing BOS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such Participant in obtaining or seeking to obtain a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation. 13 CFR § 124.601(a)
 - (2) The compensation paid to any packager, agent or representative must be reasonable in light of the service(s) performed by the packager, agent or representative. 13 CFR § 124.4(a)
 - (3) Failure to submit the report is good cause for the initiation of a termination proceeding pursuant to 13 CFR §§ 124.303 and 124.304
 - (4) The form must be signed/dated/submitted even if representatives/agents were not used.
 - f. SBA Form 912, Statement of Personal History, for all individuals claiming disadvantaged status, all individuals owning 10 percent or more, all officers, all directors, all managing partners, all managing members, each key manager, officer and members of the governing board or business committee of the applicant company and for any other person, including a hired manager, who has authority to speak for and commit the concern in the management of the business. In addition, a 912 for all individuals who have signature authority over the firm's business bank account. Any affirmative response requires details, an SBA Fingerprint card, and copies of court disposition papers. ***The SBA Fingerprint card cannot have holes, staples or additional markings and must be completed in black ink. This card may be obtained from SBA District Offices.***
 - g. SBA Form 413, Personal Financial Statement, for each disadvantaged individual upon whom 8(a) certification was based and a separate form for his/her spouse. Each individual must also include his or her most recent

- personal Federal tax return, including all schedules, attachments and supporting forms
- h. List of any pending adverse actions. (e.g. proposed debarment, lawsuit, tax liens, civil judgment, etc.)
 - i. Information regarding any changes in the Participant's ownership, control/management or structure since the firm was certified for 8(a) participation that have not been previously reported to SBA. This includes changes in the Participation Agreement, Operating Agreement, Articles of Organization, and Articles of Incorporation, By-laws or stock issues or other companies purchased or formed.
 - j. A statement from each individual upon whom 8(a) eligibility was based regarding any transfer of assets to any immediate family member, or to a trust the beneficiary of which is an immediate family member, since the date of the last statement for the most recent annual review. This statement must identify the immediate family member, the assets, its present market value, and the date of transfer.
 - k. The Participant's business plan including updates and modifications. 13 CFR §§ 124.402-403. SBA Form 1010C, 8(a) Business Plan, may be used. See Chapter 5A(ii) Business Plan Review.
 - l. Financial Statements and Tax Returns.
 - (1) Participant's interim or year-to-date financial statements including balance sheet and profit and loss (income) statements.
 - (2) If the Participant has not already submitted the required financial statements for this period, the BOS will need to request such information. Each Participant is required to submit an annual financial statement, including all notes, attachments and supplements as prepared at the end of its fiscal year. The type of statement that must be submitted depends on the Participant's gross annual receipts as set forth below. See 13 CFR § 124.602.
 - (3) Federal Business Income Tax Return including all schedules and attachments.
 - (4) Federal Individual Income Tax Returns including all schedules, attachments, 1099s, W-2s, and proof of tax paid (if owed) or payment plan for each individual(s) claiming disadvantaged status, managing partner, management member, officer, director, AND each owner of 10 percent or

more in the business. If the relevant individual is married and filing separately, signed copies of the spouse's complete tax returns for the same period should be included

- m. A copy of the Participant's current SAM profile, describing its current contract performance capabilities. You can access SAM by going to www.sam.gov
- n. For entity-owned firms (ANCs, NHOs, Tribes and CDCs), each Participant is required to submit a report of benefits. *See* 13 CFR 124.604.
- o. Any other information the SBA deems necessary for the review.

6. What Steps Must Be Followed During the Annual Review Process?

The following list represents the steps that the DO BOS must follow to complete the annual review. These steps establish required minimum actions and are not meant to preclude the DO BOS from taking any additional actions deemed necessary to review a particular Participant. The DO BOS must:

- a. Enter the code and date of receipt of the information into the activity logging section on the firm information screen in the 8(a) electronic tracking system.
- b. Ensure all items are returned and complete, including signatures where appropriate. Any missing or incomplete information must be noted and a request for the missing information must be sent by certified mail to the Participant. The DO BOS will give the Participant 10 days to supply all missing information. If all the information is not submitted within 10 days, the DO BOS will initiate termination proceedings
- c. Review the Participant's fiscal year-end total revenue, 8(a) revenue and non-8(a) revenue to ensure that the Business Activity Target (BAT) has been met. If it has not been met, remedial measures must be taken. *Refer to* Chapter 6. .
- d. Review Mentor/Protégé Worksheet and check if both parties want to continue with the mentor-protégé agreement
- e. Ensure any joint venture agreements are still active and that parties are in compliance. Verify that both parties want to continue with the joint venture agreement.
- f. Verify the firm's primary NAICS code. In addition, verify firm is still a small business under the applicable primary NAICS code based on the 3-year average of the firm's filed tax returns.

- g. Review documentation to check for any adverse information that may or may not have been reported to SBA (e.g. proposed debarment, lawsuit, tax liens, civil judgment, etc.).
- h. Report any agents listed on SBA Form 1790 to 8(a) electronic tracking system.
 - (1) For those reports that include payments that do not appear to be reasonable or appropriate relative to the services provided or that raise a suspicion of improper activity, the LBOS will forward a copy of the report to the D/OCE and the Director of Program Review with a brief analysis explaining the basis for his or her concern.
 - (2) If the D/OCE agrees with the LBOS that the compensation paid for services does not appear reasonable or that the report raises a suspicion of improper activity, the D/OCE may forward the SBA Form 1790 to the OIG or initiate other remedial measures. .
- i. Enter completion of the annual review/eligibility review and the DO BOS's recommendation into the activity logging section on the firm information screen in the official 8(a) database

7. What Must the DO BOS Do to Complete the Annual Review?

- a. Upon completion of the analysis, the DO BOS will forward the completed annual review to the DD through the ADD/8(a) BD for final disposition
- b. After the review of the DO BOS recommendation, the DD must then enter his/her recommendation in the 8(a) electronic tracking system to complete the Annual Review reporting.

8. How Is the 8(a) Participant Informed of the Results of the Annual Review?

The DO will send a letter to the 8(a) Participant notifying the firm that their annual review is complete and that the Participant continues to be eligible to participate in the 8(a) BD Program. The letter will also include other matters such as new BAT and the dates on which the Participant's next financial statements and annual review are due.

9. When Does the BOS Perform an Exit Evaluation?

An exit evaluation is performed on any Participant leaving the program. Participant firms that have completed their nine-year tenure in the program will receive an exit evaluation in lieu of a

ninth annual review. Any Participant that is terminated, achieves early graduation, or voluntarily withdraws from the 8(a) BD program must have an exit evaluation as well.

10. What Is Included in the Exit Evaluation?

- a. The exit evaluation consists of a summary of services/benefits received by the firm during its program tenure and an exit survey of questions to the owner on the effectiveness of the 8(a) BD program.
- b. The exit evaluation will include a summary of services/benefits received by the firm during program tenure. The evaluation will address:
 - (1) Total contracts received;
 - (2) Training received;
 - (3) Joint venture agreements;
 - (4) Mentor/protégé agreements; and
 - (5) Surplus property
- c. The exit survey will consist of questions to the owner addressing:
 - (1) Benefits of the program to the firm;
 - (2) Problems experienced during the program term; and
 - (3) Recommendations to improve the program.

11. What Is the Time Frame for an Exit Evaluation?

The exit evaluation and survey will be conducted between 30-90 days before the Participant's program term end date and should be entered into 8(a) database.

12. What Are the Exceptions for Entity-Owned Firms (ANC-owned, Tribally-owned, NHO-owned, & CDC-owned Firms) During the Annual Review Process?

- a. Annual Financial Statements:
 - (1) Participants with gross annual receipts of more than \$10,000,000 which are owned by a Tribe, ANC, NHO or CDC may elect to submit unaudited annual financial statements within 120 days after the close of the firm's fiscal year, provided the following additional documents are submitted simultaneously;

- (2) Audited annual financial statements for the entity which owns the Participant, prepared by a licensed independent public accountant, for the equivalent fiscal year; and
 - (3) Certification from the Participant's Chief Executive Officer and Chief Financial Officer (or comparable positions) that each individual has read the unaudited financial statements, affirms that the statements do not contain any material misstatements, and certifying that the statements fairly represent the Participant's financial condition and result of operations.
 - (4) Participants owned by Tribes, ANCs, NHOs and CDCs may submit consolidated financial statements prepared by the parent entity that include schedules for each 8(a) Participant instead of separate audited financial statements for each individual 8(a) Participant.
 - (5) NOTE: The DO BOS will share this information with the OCE BOS.
- b. Reports of Benefits for Firms Owned by Tribes, ANCs, NHOs and CDCs:
- (1) As part of the annual review submission, each Participant owned by a Tribe, ANC, NHO or CDC must submit to DO BOS information showing how the Tribe, ANC, NHO or CDC has provided benefits to the Tribal or native members and/or the Tribal, native or other community due to the Tribe's/ANC's/ NHO's/CDC's participation in the 8(a) BD program through one or more firms. This data includes information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services provided by the Tribe, ANC, NHO or CDC to the affected community.
 - (2) NOTE: The DO BOS will share this information with the OCE/HQ BOS.
- c. Change in Primary Industry Classification for Entity-Owned Firms. SBA may change the primary industry classification contained in a Participant's business plan where the greatest portion of the Participant's total revenues during the Participant's last three completed fiscal years has evolved from one NAICS code to another. As part of its annual review, SBA will consider whether the primary NAICS code contained in a Participant's business plan continues to be appropriate.
- (1) Where SBA believes that the primary industry classification contained in a Participant's business plan does not match the Participant's actual

revenues over the Participant's most recently completed three fiscal years, SBA may notify the Participant of its intent to change the Participant's primary industry classification and afford the Participant the opportunity to respond.

- (2) A Participant may challenge SBA's intent to change its primary industry classification by demonstrating why it believes the primary industry classification contained in its business plan continues to be appropriate, despite an increase in revenues in a secondary NAICS code beyond those received in its designated primary industry classification. The Participant should identify: all non-federal work that it has performed in its primary NAICS code; any efforts it has made and any plans it has to make to receive contracts to obtain contracts in its primary NAICS code; all contracts that it was awarded that it believes could have been classified under its primary NAICS code, but which a contracting officer assigned another reasonable NAICS code; and any other information that it believes has a bearing on why its primary NAICS code should not be changed despite performing more work in another NAICS code.
- (3) As long as the Participant provides a reasonable explanation as to why the identified primary NAICS code continues to be its primary NAICS code, SBA will not change the Participant's primary NAICS code.
- (4) Where an SBA change in the primary NAICS code of an entity-owned firm results in the entity having two Participants with the same primary NAICS code, the second, newer Participant will not be able to receive any 8(a) contracts in the six-digit NAICS code that is the primary NAICS code of the first, older Participant for a period of time equal to two years after the first Participant leaves the 8(a) BD program.

Chapter 5A(i) Business Plan Review

1. What Is Included in the Business Plan Review?

The business plan review is conducted in conjunction with the annual review. The Participant must submit any modifications to the business plan and updated information to its DO BOS within 30 days after the close of each program year. In performing the business plan part of the review, the DO BOS must:

- a. Coordinate with the Participant any changes requested in the business plan or corporate capabilities. Have the Participant submit a new business plan or addendums to its existing business plan to show the requested changes.
- b. Review the Participant's business plan with the Participant and modify the plan as appropriate, including:
 - (1) The modification or update of the minimum elements of the business plan, as indicated in 13 CFR § 124.402(c).
 - (2) Determine if the primary NAICS code has changed or if there is a transition plan from one primary NAICS code to another primary NAICS code;
 - (3) The current capability statement or SAM profile;
 - (4) The annual forecast of contract support requirements;
 - (5) The transition management strategy, when required;
 - (6) Training requirements; and
 - (7) Succession plans.
- c. Ensure that the Participant's capability statement (SAM profile) has been updated.
- d. For Participants in the transitional stage of the program (years 5 through 9), review the transition management strategy.
- e. Analyze the Participant's compliance with required business activity target (BAT). If it has not been met, a remedial action plan must be developed (*See* Chapter 6: Business Activity Targets).
- f. Review the breakdown report of all contracts that are 8(a) and non-8(a) contracts along with dollar values performed during the year (SBA Form 1450, Attachment C) and determine whether the annual contract forecast data presented in the SBA Form 1450 seem reasonable and coordinate any changes

with the Participant. One suggested approach is to base this on a comparison to the Participant's historical contract rate (Hit Rate) for the past 3-5 years. Any projected increase or decrease in projected contract activity should be explained.

- g. Incorporate any addendums to the business plan i.e., mentor/protégé agreements or Joint Ventures formed within the last program year.
- h. Take into consideration the Participant's financial statement's information and determine the appropriate actions and resources to assist the Participant in increasing its business development.

2. What Is a Capability Statement?

The capability statement describes the Participant's current contract performance capabilities and is maintained in its SAM profile.

3. What Information Is Contained in the Participant's Annual Forecast?

The annual forecast must include:

- a. The aggregate dollar value of 8(a) contracts sought by the Participant, broken down by sole source and competitive opportunities, where possible;
- b. The aggregate dollar value of non-8(a) contracts sought by the Participant;
- c. The types of contract opportunities sought by the Participant, identified by products or service;
- d. Bonding levels required for these goals (if needed); and
- e. Hit rate or number of bids submitted versus number of contract awards.

4. What Information Is Contained in the Transition Management Strategy and When Must It Be Submitted?

The transition management strategy must be submitted with the annual review documents beginning with the first year of the firm's transitional stage and each year thereafter. See 13 CFR § 124.403(c). The strategy must describe:

- a. How the Participant intends to meet the applicable non-8(a) business activity targets during the transitional stage of participation; and
- b. The specific steps the Participant intends to make to continue its business growth and promote profitable business operations after the expiration of its program year.

5. What Items Are to Be Included in the Training Requirements?

- a. During the annual review, the DO BOS and the Participant review and discuss the Participant's performance over the preceding year and identify areas of opportunity for improvement. Together they develop a training plan to assist the participant in meeting the goals for upcoming program year. Each year, the DO BOS and the Participant review previous training plans and determine what the Participant has accomplished in term of obtaining training and other assistance.
- b. If the Participant needs training on "How to Do Business with the Government?" or "How to write government contracting proposals?", then the BOS should recommend the 7(j) Program, SBA online courses, and local resources partners for further assistance.

Chapter 5A(ii) Financial Review

1. What Financial Information Is Required from the Participant for the Financial Review?

- a. Each Participant is required to submit its financial statements on an annual basis, including all notes, attachments and supplements as prepared at the end of its fiscal year. The type of statement that must be submitted depends on the participant's gross annual receipts as set forth below. Statements under subparagraphs (1) and (2) below must be prepared in accordance with Generally Accepted Accounting Principles.
 - (1) Participants with gross annual receipts of more than \$10,000,000 must submit an audited annual financial statement prepared by a licensed independent Certified Public Accountant (CPA) within 120 days after the close of the firm's fiscal year. NOTE: Please refer to the Paragraph 12 – "What Are the Exceptions for Entity-Owned Firms (ANC-owned, Tribally-owned, NHO-owned, & CDC-owned Firms) During the Annual Review Process?" in Chapter 5A: 8(a) Annual Review and 13 CFR § 124.602(a)(1) for guidance regarding entity-owned firms.
 - (2) Participants with gross annual receipts between \$2,000,000 and \$10,000,000 must submit a reviewed annual financial statement prepared by a licensed independent Certified Public Accountant (CPA) within 90 days after the close of the firm's fiscal year.
 - (3) Participants with gross annual receipts of less than \$2,000,000 must submit annual statements, in a format acceptable to SBA prepared in-house, or a compilation statement prepared by a licensed independent accountant, verified as to accuracy by an authorized officer, partner, limited liability company member or sole proprietor of the Participant within 90 days of the close of the firm's fiscal year.
- b. SBA may require audited or reviewed financial statements when needed to obtain more complete information about a participant's assets, liabilities, income or expenses. 13 CFR § 124.602(f). This need may arise in the context of the firm's capacity to perform a specific contract or the firm's continued eligibility.
- c. For each completed fiscal year, SBA will require each Participant to provide or to break out financial data in order to permit SBA to calculate the firm's total assets, current ratio, debt/net worth ration, net worth, net sales, pre-tax profit

and sales/working capital ratio. The financial information provided by the 8(a) Participant must also include a Balance Sheet and Profit and Loss/Income Statement.

2. Can the Requirement for Audited Financial Statements Be Waived?

- a. For good cause, the servicing DD may waive the requirement for submission of audited financial statements. Good cause includes, but is not limited to, the following:
 - (1) The Participant provides documentation showing it had an unexpected increase in sales towards the end of its fiscal year that created an unforeseen requirement for audited statements;
 - (2) The Participant provides documentation showing it unexpectedly has experienced severe financial difficulties that would make the cost of audited statements a particular burden; or
 - (3) The Participant has been an 8(a) Participant for less than 12 months.
- b. The procedure for processing a request to waive the requirement for audited financial statements is as follows:
 - (1) The Participant submits a written request for a waiver, documenting the need for the waiver;
 - (2) The servicing DO BOS reviews the request and prepares a recommendation;
 - (3) The DDD or the LBOS adds comments and his or her recommendation;
 - (4) The DD approves or denies the request; and
 - (5) The DO BOS notifies the firm in writing of the DD's decision. If the decision is to grant the waiver, the letter must notify the Participant that it must provide a self-prepared financial statement. If the decision is to deny the requested waiver, the letter must notify the Participant that it must provide either an audited or reviewed financial statement. The letter to the Participant must advise that the financial statement (whether self-prepared, reviewed or audited) must be provided within 30 days of the date of the letter, or, if the fiscal year for which the statement is being provided has not ended, within 90 days of the close of the fiscal year.

3. When Should the Financial Review Be Completed?

A preliminary review of the financial statements should be conducted when the Participant submits its fiscal year to determine whether there are any apparent issues that require immediate attention and need to be immediately addressed. The DO BOS will conduct a complete financial review at the same time as the annual review. The DO BOS will provide all financial information submitted by the Participant to OCE.

4. What Steps Must Be Taken to Perform a Complete Financial Review?

The following steps establish minimum actions that must be taken, but they do not preclude the OCE BOS or DO BOS from taking any additional actions necessary to perform a financial review of a particular Participant at any time.

- a. Preliminary Review for the Participant’s Fiscal Year End Financial Statement:
 - (1) Based upon a review of data in the official 8(a) database, the DO staff will issue a letter to the firm reminding it that its financial statements are due. This letter will describe the types of financial statements that are needed depending on the Participant’s revenues, as set forth in Paragraph 1 – “What Financial Information Is Required from the Participant for the Financial Review?”, and must be issued no later than 30 days prior to the close of the Participant’s fiscal year.
 - (2) The DO BOS will determine whether the type of financial statement submitted is correct for the level of gross annual receipts reported in the financial summary. The DO BOS will immediately request that the Participant submit the correct statement if an incorrect one has been submitted. NOTE: An 8(a) Participant who submits a financial statement that does not meet the requirements set forth in Paragraph 1 – “What Financial Information Is Required from the Participant for the Financial Review?” of this Chapter is not eligible for program support, except if the Participant has been granted a waiver for audited financial statements.
 - (3) Upon receipt of the financial statement, the DO BOS will enter the following data into the activity logging section of the firm information screen maintained in the official 8(a) database: the date the financial statement was received and the type of financial statement submitted (i.e., audited, reviewed or prepared in-house).
 - (4) The DO BOS will then enter the financial worksheet information into the official 8(a) database financial screen and perform a preliminary review of the statements to determine whether there are any apparent issues that

require immediate attention and need to be immediately addressed, e.g. issues involving size, control, or excessive withdrawals. The DO BOS should also examine the financial statements to determine whether there is a risk that the firm might not be able to meet its BAT (13 CFR § 124.509) by the end of its program year. The DO BOS should also take into consideration the firm's business plan when reviewing the financial statements in term of how SBA could assist the firm in increasing its sales and business opportunities. Upon completing the preliminary review, if there are no outstanding issues, the DO BOS will forward a copy of all the financial information to OCE. The DO BOS will put the financial statement in the Participant's file for complete financial review when the annual review is performed

- b. Complete Financial Review During Annual Review:
 - (1) During the annual review, the DO BOS conducts the financial review based upon the information received (the Participant's fiscal year financial statements in addition to the Participant's interim/up-to-date financial statements).
 - (2) The DO BOS will record comments on the general financial condition of the Participant as well as any areas where the Participant may need further assistance or careful monitoring for future trends.
 - (3) If, in the course of the financial review, any questions or concerns were raised about the disadvantaged individual's continued economic disadvantage or any other eligibility concerns, an eligibility review must be performed (see Chapter 5B: 8(a) Continuing Eligibility Review).
- c. The financial review will include consideration of the following:
 - (1) Whether the financial information coupled with the business tax returns shows that the firm is still a small business if the firm's primary NAICS code is revenue-based;
 - (2) Whether there is financial information showing that the firm is affiliated with a non-disadvantaged firm so that it is no longer small (see 13 CFR § 121.103);
 - (3) Whether the financial information is consistent with the firm's annual report of contracting activity; and
 - (4) Whether the firm has met its business mix requirements under 13 CFR § 124.509.

- d. The DO BOS must also perform a summary review of the Participant's financial condition.
- (1) Review the Participant's financial statements, paying particular attention to its net worth, working capital, profitability, and revenues, looking out for any disturbing trends or patterns the statements may reveal (*e.g.* sustained losses or decreasing revenues);
 - (2) Determine the extent to which additional financing may be necessary or advisable, and identify potential sources of financing (including long-term financing, working capital financing, equipment trade credit, supplier trade credit, access to raw materials, and bonding capacity);
 - (3) Analyze the firm's credit position as revealed by its loan repayment history (including any SBA loans it may have obtained), business credit reports, and the pool of assets it has available for use as collateral;
 - (4) Review of the firm's assets to ensure they are not over inflated, i.e. a note receivable from a shareholder; and
 - (5) Ensure items listed on the financial statements correspond with Generally Accepted Accounting Principles, for example, "goodwill".
- e. The DO BOS will enter into the activity logging section of the firm information screen in the 8(a) electronic tracking system that the financial review is complete.

Chapter 5B: 8(a) CONTINUING ELIGIBILITY REVIEW

1. What Are the Contents of the Sub-Chapter?

Subchapter 5B covers the Continuing Eligibility Review Process.

2. What Is the Difference between an Annual Review and a Continuing Eligibility

The difference between an annual review and a continuing eligibility review is that the annual review focuses on the firm and its business development while the continuing eligibility review focuses on the compliance of the Participant as outlined in 13 CFR §§ 124.101-124.112.

3. Who Conducts the Continuing Eligibility Review?

- a. Continuing eligibility reviews are conducted by the DO and OCE.
- b. OCE conducts continuing eligibility review on 8(a) Participant firms that are considered high risk/complex and those that are requested from the field staff.
- c. The OCE will use risk based model to determine those 8(a) Participant firms.
High Risk/Complex Model Criteria:
 - (1) 8(a) Participants with total 8(a) revenues over \$10 million;
 - (2) Firms engaged in Joint Ventures;
 - (3) Firms which are party to mentor/protégé agreements;
 - (4) Entity-owned firms (ANC, NHO, Tribes, CDC).
- d. DOs continue to conduct annual reviews along with continuing eligibility reviews for all 8(a) BD Program Participants that do not meet the high risk/complex model criteria identified above.

4. When Is a Continuing Eligibility Review Performed?

Continuing eligibility reviews are conducted annually in conjunction with the Participant's annual review for those that are performed by the DO. OCE conducts continuing eligibility review for high risk/complex firms at the same with the DO's annual review. However, the DO BOS or the OCE BOS can also initiate an eligibility review whenever they have reason to question a Participant's continued eligibility. Reasons for a continuing eligibility review may include:

- a. Receipt of specific and credible information alleging that a Participant no longer meets the 8(a) BD Program eligibility requirements.

- b. Information acquired during a change of ownership, business structure or substitution action.
- c. Anything else that raises a question concerning a Participant's continued eligibility.
- d. A size protest is brought against a Participant a continuing eligibility review may be initiated.

5. What Is the Process for a Continuing Eligibility Review on High Risk Firms Conducted by OCE?

The process for a continuing eligibility review for high risk/complex firms is as follows:

- a. The firm's requested annual review information will be shared with OCE. When the DO BOS receives the firm's annual review information, the DO BOS will need to upload to the 8(a) BD share drive for the OCE staff to have access to it.
- b. The OCE BOS obtains all the required documents as listed in Chapter 5A: 8(a) Annual Review, Paragraph 5 – "What Information Must Be Requested for the Annual Review?" and pulls third party reports.
- c. The OCE BOS reviews and prepares an analysis with a preliminary recommendation as to whether the 8(a) Participant is eligible or ineligible and forwards the package to the OCE SBOS.
- d. The OCE SBOS reviews the entire package.
 - (1) If the OCE SBOS concurs, then the OCE SBOS forwards the package to the D/OCE.
 - (2) If the OCE SBOS does not concur, then the OCE SBOS returns the package to the OCE SBOS for further analysis.
- e. The D/OCE reviews the entire package and concurs or rejects the recommendation.
 - (1) If the recommendation is to retain and the D/OCE concurs, then the D/OCE's decision is final.
 - (2) If the recommendation is to retain and the D/OCE does not concur, then the D/OCE returns the package to the OCE SBOS for further analysis.

- (3) If the recommendation is to remove the Participant from the 8(a) BD Program and the D/OCE does not concur and decides the Participant should remain in the Program, the D/OCE's decision is final.
- (4) If the recommendation is to remove the Participant from the 8(a) BD Program and the D/OCE concurs, then OCE BOS will collaborate with the DO BOS to initiate the adverse action process (including suspension, termination or early graduation recommendation). For additional guidance, please refer to Chapter 10: Leaving the 8(a) Program.

6. What Is Included in the Continuing Eligibility Review for High Risk/Complex Individual Firms?

In conducting a continuing eligibility review, the OCE BOS will make the following determinations:

- a. Whether the disadvantaged individual(s) upon whom eligibility is based meet the economic disadvantage requirements for continuing eligibility set forth in 13 CFR § 124.104:
 - (1) Net worth must be less than \$750,000.
 - (2) Adjusted gross income averaged over the three preceding years may not exceed \$350,000.
 - (3) Total assets may not exceed \$6 million.
- b. Whether the disadvantaged individual(s) upon whom eligibility is based unconditionally own at least 51 percent of the firm as required by 13 CFR § 124.105.
- c. Whether the disadvantaged individual(s) upon whom eligibility is based control the Participant as required by 13 CFR § 124.106.
 - (1) For ownership and control, the BOS does not have to conduct a complete review as indicated in SOP Chapter 2D: Determining Individual and Business Eligibility if there are no changes (e.g., no options were issued, no new unidentified owners, no new officers or changed in officer positions, no new directors or new members/partners, disadvantaged individual(s) remains full-time, the annual review information remains the same from the original record, etc.). However, if there are changes such as, but not limited to, changes in stock ownership, issuance of new shares or the creation of a new class of stock, changes in the officers and board of directors or modifications to the Operating Agreement or Participation

Agreement (refer to Chapter 7: Changes – Ownership, Business Structure, Management & Name for further guidance on changes of ownership, business structure, management and name), then the BOS needs to follow the steps identified in Chapter 2D: Determining Individual and Business Eligibility.

- d. Whether the disadvantaged individual(s) upon whom eligibility is based, along with non-disadvantaged owners, officers, directors, management partners continue to meet the good character requirements set forth in 13 CFR § 124.108(a).
- e. Whether records of payments, compensation and distributions indicate any excessive withdrawals of funds or other business assets. *See* 13 CFR § 124.112(d).
- f. If during the review of the continuing eligibility, adverse information is obtained from the Participant or a credible source regarding possible criminal conduct by the Participant or any of its principals, OCE may suspend further processing of the continuing eligibility review and refer the case to OIG for review.
 - (1) If OCE does receive a response from OIG within 45 days, OCE may coordinate with OIG to determine a suitable date to recommence the processing of the application.
 - (2) The AA/BD may consider any findings of the OIG when evaluating the application.
- g. NOTE: For specific guidance regarding economic disadvantage, ownership, control and good character determinations, please refer the SOP Chapter 2D Determining Individual and Business Eligibility.

7. What Is Included in the Continuing Eligibility Review for High Risk/Complex Entity-Owned Firms?

The continuing eligibility review for entity-owned firms includes reviews of the following eligibility areas:

- a. Economic Disadvantage – The OCE BOS must determine if the firm continues to meet the economic disadvantage requirements of the program.
 - (1) Indian tribes – No review is necessary unless specifically requested by the AA/BD.

- (2) Alaska Native Corporation (ANC) – No review is necessary since ANCs are presumed to be economically disadvantaged.
 - (3) Native Hawaiian Organization (NHO) – No review is necessary unless specifically requested by the AA/BD.
 - (4) Community Development Corporation (CDC) – No review necessary since CDCs are considered economically disadvantaged.
- b. Ownership – The OCE BOS must determine if the firm continues to meet the ownership requirements of the program. The OCE BOS will review the file to determine if there have been any changes of ownership.
- (1) If there has been a change of ownership, the OCE BOS will determine whether the change of ownership was formally approved by the AA/BD. If so, no further review of ownership is necessary.
 - (2) If there has been a change of ownership that SBA did not know about or that has not been formally approved by the AA/BD, the OCE BOS may recommend a suspension on the Participant Firm.
- c. Control/Management – The OCE BOS must determine if the firm continues to meet the control and management requirements of the program.
- (1) The OCE BOS reviews the file to determine if there have been any changes of management. The OCE BOS reviews the original BOS analysis, SBA Form 1450, SBA Form 1010, and any documentation regarding changes of management in the 8(a) BD share drive to determine the previous and current officers, directors, member representatives, general manager, etc.
 - (2) If there has been a change of management, the OCE BOS will need notify the DO to follow up with the Participant to obtain additional information.
- d. Excessive Withdrawals – The OCE BOS reviews the SBA Form 1450 to determine the compensation paid and whether there have been excessive withdrawals from the firm.
- (1) Withdrawals made for the benefit of the Indian tribe, ANC, NHO, CDC, or the native or shareholder community are not part of the excessive withdrawal analysis.
 - (2) Other withdrawals (i.e. those benefiting a non-disadvantaged owner or non-disadvantaged manager) are part of the excessive withdrawal analysis.

If the withdrawals exceed the limits outlined at 13 CFR § 124.112 (d)(3), SBA **may** find the withdrawal to be excessive.

- (3) The regulations state SBA **may** find the withdrawal to be excessive. Thus, the OCE BOS needs to provide further explanation if the OCE BOS determines the withdrawal is not excessive even though it exceeds the outlined limits.
- e. Good Character – The OCE BOS must perform a good character review for the firm and all pertinent individuals, as applicable (including the individual responsible for the day-to-day management and operations, member representatives, officers, directors, managing partners, managing members, owners of 20 percent or more, bank account signatories, and key employees).
- (1) The OCE BOS reviews the SBA Form 912 for each pertinent individual.
 - (2) The OCE BOS performs searches for the firm and all pertinent individuals on SAM and CAIVRS.
 - (3) The OCE BOS performs third party verifications on the firm and day-to-day manager.
 - (4) If adverse information is uncovered, the OCE BOS may need to contact the DO BOS to obtain further clarification.
 - (5) NOTE: The guidelines for reviewing entity-owned firms, unless noted otherwise, are the same as an initial eligibility review and changes of ownership and management review as found in Chapter 2D: Determining Individual and Business Eligibility and Chapter 7: Changes – Ownership, Business Structure, Management & Name, respectively.

Chapter 5C: Request for 8(a) Eligibility Waivers

1. When Is a Waiver Required?

a. Outside Employment:

- (1) Any disadvantaged manager who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment and obtain the prior written approval of SBA. SBA will deny a request for outside employment which could conflict with the management of the firm or could hinder it in achieving the objectives of its business development plan. 13 CFR § 124.106(a)(4).
- (2) The Participant must notify its DO BOS in writing that he/she would like to engage in outside employment and provide the nature and anticipated duration of the outside employment.
- (3) The DO BOS will submit a written recommendation to AA/BD, setting forth the reasons for the exception to outside employment. The recommendation must be submitted through the LBOS/DDD and DD to the AA/BD for approval or decline.

b. Not Receiving the Highest Compensation:

- (1) The highest ranking officer (disadvantaged individual) may elect to take a lower salary than a non-disadvantaged individual only upon demonstrating that it helps the applicant or Participant. The Participant must obtain the prior written consent of the AA/BD or designee before changing the compensation paid to the highest ranking officer to be below that paid to a non-disadvantaged individual. 13 CFR § 124.106(e)(3)
- (2) The Participant must notify the servicing DO BOS in writing that he/she wishes to take a lower salary than a non-disadvantage individual. The Participant must provide justification along with the anticipated duration of the situation and be able to demonstrate that it helps the Participant concern.
- (3) The DO BOS will submit a written recommendation to AA/BD, setting forth the justification for the disadvantaged individual not receiving the highest compensation. The recommendation must be submitted through the LBOS/DDD and DD to the AA/BD for approval or decline.
- (4) During the annual review, the DO BOS will need to review the compensation paid to the non-disadvantaged individual and that of the

disadvantaged individual and compare to any previously approved requests

- (5) NOTE: When determining the total compensation paid, the DO BOS must take into consideration the totality of the compensation the disadvantaged individual(s) and non-disadvantaged individual(s) receive. Some of the considerations include: salary, distributions, stocks, dividends, bonuses, advances, and others.

CHAPTER 6: BUSINESS ACTIVITY TARGETS

1. What Are 8(a) Business Activity Targets (BATs)?

- a. To attain full competitive viability by the conclusion of its participation in the 8(a) BD program, the Participant must make maximum efforts to obtain business outside the program. In other words, the Participant must perform on contracts that are not 8(a) awards (competitive or sole source).
- b. To meet this objective, during the transitional stage of participation (year 5 – year 9), SBA requires that the Participant achieve certain targets of non-8(a) contract revenue.
- c. These targets are called business activity targets (BAT) and are expressed as a percentage of total revenue. During the transitional stage of program participation, Participants must meet the following BATs:

Transitional Stage (Years 5-9)	
Program Year	Required Business Activity Target
5	15 percent
6	25 percent
7	35 percent
8	45 percent
9	55 percent

2. How Is Compliance with BATs Measured?

- a. The BOS measures a Participant's compliance at the end of each program year in the transitional stage.
- b. Compliance is ascertained by comparing the Participant's non-8(a) revenue to its total revenue during the program year just completed. *See* 13 CFR § 124.509(b)(3).
- c. 8(a) revenue is determined by adding the base year value of all 8(a) contracts awarded during the applicable program year to the value of all options and modifications executed during that year.

3. How Do Participants Report Compliance with BATs?

- a. At the close of each fiscal year, the Participant must provide annual financial statements with a breakdown of 8(a) and non-8(a) revenue. *See* 13 CFR § 124.602.

- b. Pursuant to 13 CFR § 124.509(c) and SBA Form 1450, within thirty days of the end of its program year, the Program Participant must provide an annual report of all non-8(a) contracts, options, and modifications involving price, executed during that program year. The Program Participant should show their contract awards on SBA Form 1450.
- c. The Participant must certify that it is in compliance with the applicable BAT or with any remedial action plan imposed by SBA before it can receive any 8(a) sole source contract during the transitional stage.

4. What Work Qualifies as Non-8(a) Revenue?

The following qualifies as “work performed outside of the 8(a) BD program” and is considered non-8(a) revenue:

- a. Work performed by an 8(a) Participant for any Federal department or agency other than through an 8(a) contract, including work performed on orders under the General Services Administration Multiple Award Schedule program.
- b. Work performed as a subcontractor, including work performed as a subcontractor to another 8(a) Participant on an 8(a) contract.
- c. Work performed on non-Federal contracts.
- d. Work performed under a JV that is not an 8(a) contract award.

5. How Can a Participant be Reinstated to Receive Sole Source 8(a) Contracts After Non-Compliance?

If a Participant demonstrates compliance with its BAT, SBA will allow it to receive any 8(a) sole source contracts before its annual review.

- a. The Participant can demonstrate that it has complied with its BAT by:
 - (1) Waiting until the end of the current program year and demonstrating as part of the normal annual review process that it has met the BAT for the current year; or
 - (2) Submitting information regarding its 8(a) revenue and non-8(a) revenue to SBA quarterly throughout the current program year.
- b. To qualify for reinstatement during the first six months of the current program year, the Participant may submit to SBA its financial statements and additional information demonstrating that it has received non-8(a) revenue and new non-8(a) contract awards that are equal to or greater than the dollar amount by which

it failed to meet its business activity target for the previous program year. For this purpose, SBA will not count options on existing non-8(a) contracts that have not been executed in determining whether a participant has received new non-8(a) contract awards. See examples at 13 CFR § 124.509(d)(2).

- c. To qualify for reinstatement during the last six months of the current program year, the Participant must demonstrate that it has achieved its non-8(a) business activity targets as of that point in the current program year. For this purpose, SBA will count options on existing non-8(a) contracts.
- d. When evaluating compliance with the BAT, the BOS must review both the 8(a) revenue and non-8(a) revenue. This ensures that the BOS knows the total amount of revenue.

6. What Happens If a Participant Fails to Meet Its BAT?

- a. If the Participant fails to meet the applicable BAT, it is ineligible to be awarded sole source 8(a) contracts in the current program year unless a waiver is granted by the AA/BD or his or her designee. 13 C.F.R. § 124.509(e). It may also be subject to other requirements imposed by SBA. 13 CFR 124.509(d)(4).
- b. The DDD or LBOS will notify the Participant in writing of any remedial measures imposed. If remedial measures are imposed, the BOS will also increase monitoring of the Participant's contracting activity.

7. What Remedial Action Plan Can SBA Impose?

- a. SBA is authorized to take appropriate remedial measures whenever a Participant fails to attain its BAT. Remedial measures are imposed during the subsequent program year.
- b. The remedial measure(s) will depend on the extent to which the Participant failed to attain the targets and the effort it expended to seek non-8(a) business. The remedial action plan includes, but is not limited to:
 - (1) Requiring the firm to obtain counseling, management assistance and/or technical assistance.
 - (2) Requiring the firm to attend seminars and/or workshops related to management, business development, financing, marketing, proposal preparation, construction management, etc.

- (3) Requiring the Participant to take affirmative steps to expand the dollar volume of its competitive business activity, such as changes in marketing or financing strategies.
- c. The remedial measures should be designed to bring the Participant into compliance with its BAT and must be:
 - (1) Precise: comprehensively addressing the specific problems causing the firm's failure to achieve its BAT, not dealing with generalities, and not leaving the solution or outcome vague or debatable.
 - (2) Prescriptive: reflecting a specific strategy or condition to be met, and dealing with each problem separately.
 - (3) Attainable: assuring that measures are affordable and capable of being implemented within a reasonably short period of time, assigning specific time periods for the problem to be corrected or solved, and assuring that measures are not long-term, drawn out solutions that cannot be measured or completed within weeks or months.
 - (4) Restricted: providing a specific time period for remediation, *e.g.*, one month, three weeks, and establishing check points, *e.g.*, at first, third, and fifth weeks; solution or specific progress should be measurable in this period.
 - (5) Definite: specifying the actions that will occur if the prescription or remediation is not followed or achieved; ensuring that if "a" is done, "b" will follow; if "c" is not done, "d" will follow.

8. What Must the BOS Do after He or She Has Reviewed a Participant's Compliance with Its BAT and Any Remedial Action Plan Imposed during a Prior Review?

- a. As a result of the annual review, the BOS must prepare a written evaluation and recommendation concerning any remedial measures imposed during the prior review. In determining compliance with the remedial measures, the BOS should consider:
 - (1) The firm's most recent year-end and quarterly financial statements.
 - (2) The business activity report of non-8(a) and 8(a) revenue based on the firm's program year.
 - (3) The firm's compliance with its marketing plan/strategy as expressed in its business plan/transition management plan.

- (4) The documented efforts of the firm to obtain non-8(a) contracts.
 - (5) The firm's hit rate of all contracts, including 8(a) and non-8(a) contracts.
 - (6) Other information relevant to the firm's pursuit and acquisition of non-8(a) contracts.
- b. The BOS must submit the evaluation and recommendation for remediation to the DDD or LBOS who will comment and forward the package to the DD for a final determination.
 - c. The BOS may recommend program termination if a Participant makes no effort to obtain non-8(a) revenues.

9. May a Participant That Has Failed to Achieve Its BAT Request a Waiver of the Prohibition of Sole Source 8(a) Contracts?

- a. Yes, a participant that has failed to achieve its BAT may request such a waiver. A procuring activity may also request such a waiver.
- b. The decision to grant or deny a waiver is at SBA's discretion and cannot be appealed.
- c. Waiver of the sole source prohibition for failure to achieve BATs should not be a mechanism for circumventing the intent of the targets. This intent is to ensure competitive viability as a Program Participant moves from the sheltered competition of the 8(a) BD program to small business set-aside and full and open competition.

10. How Is a Waiver Processed?

- a. If a Participant requests a waiver of the sole source prohibition, only the AA/BD or his or her designee can approve or decline the request. If an agency requests a waiver of the sole source prohibition, only the SBA Administrator can approve or decline the request. In either event, the request is processed through the relevant DO, OMTA, and BD, as follows:
- b. If a Participant requests a waiver:
 - (1) The Participant firm must establish that denial of a sole source contract would cause severe financial hardship on the Participant so that the Participant's survival may be jeopardized or extenuating circumstances existed beyond the Participant's control that caused the Participant not to meet its BAT.

- (2) In all cases, the Participant must provide a narrative with supporting documentation explaining the circumstances in detail.
 - (3) Examples of financial hardship can include impact on the company, company employees, and the community.
 - (4) Examples of extenuating circumstances causing the firm to not meet the business activity target might be a cancelled procurement where the 8(a) Participant had invested considerable time and dollars for bid/proposal and/or negotiation costs; a cancelled procurement where the cancellation caused the loss of lease deposits or similar expenses; and the cancellation had a negative impact on additional marketing, hiring of new employees or start-up funds for new projects.
- c. If a procuring activity requests a waiver, the head of a procuring activity must represent to the SBA Administrator that award of a sole source 8(a) contract to the Participant is needed to achieve significant interests of the Government.
 - d. Once the BOS completes his/her assessment, the DDD or LBOS (or equivalent) will review the BOS's assessment and recommendation, and forward the package to the DD for action.
 - e. If the DD concurs with the recommendation, the DD forward the complete package to the AA/BD, through the D/OMTA.
 - f. To the maximum extent practicable, requests should be submitted electronically, via attachment to OMTA email box at BDManagement&TechnicalAssistance@sba.gov. To improve processing control, they should *not* be emailed directly to the Associate Administrator or Deputy Associate Administrator for Business Development. Once a request is accepted for processing by OMTA, assigned staff will be identified to the requesting DO.
 - g. In the email subject line include: 'Waiver of Sole Source Prohibition,' followed by the Program Participant's name and Case Number. The following attachments must be included:
 - (1) DO recommendation regarding request for waiver of the sole source prohibition (i.e., to approve or decline) in PDF and Word formats. This document should summarize, analyze, and/or address each of the matters referenced in subparagraphs 2 – 6 below, and conclude with the DO's recommendation to grant or deny the request. ***OMTA cannot process this action without the recommendation.***

- (2) A copy of the Program Participant's request to the DO for the waiver.
- (3) A copy of the Program Participants narrative explanation of non-compliance with business activity target.
- (4) Offer Letter from a procuring activity, in accordance with 13 CFR § 124.502(c).
- (5) The servicing BOS's assessment of the progress made by the Participant in meeting the goals and objectives of the Remedial Action Plan.
- (6) Business activity target statistics for the preceding three years, including the firm's status in meeting the current year business activity target.

11. Who Makes the Final Decision on the Waiver Request?

- a. For waivers requested by the Participant, as discussed above, the AA/BD or his or her designee will make the final decision to approve or decline the request.
- b. For waivers requested by the procuring activity, as discussed above, the SBA Administrator will make the final decision to approve or decline the request.
NOTE: No one of lesser authority can make this decision.
- c. Once a final decision is made (by the AA/BD or the SBA Administrator), the D/OMTA will transmit the final decision and package to the DDD or LBOS (or equivalent) for disposition.

12. Once the Waiver Is Granted/Approved, What Must the Participant Do to Receive a Sole Source Contract?

- a. A firm receiving a waiver will be able to self-market its capabilities and receive one or more sole source 8(a) contracts during the next program year.
- b. At its next annual review, SBA will reevaluate the firm's circumstances and determine whether the waiver should be extended an additional program year.

CHAPTER 7: CHANGES - OWNERSHIP, BUSINESS STRUCTURE, MANAGEMENT & NAME

1. What are the Roles and Responsibilities of the DO, and the OCE?

- a. District Office. The DO is responsible for conducting the initial review of all requests for a change of ownership, business structure and/or name received from the Participant.
- b. Office of Certification and Eligibility. OCE is responsible for processing and recommending final action for all changes of ownership and business structure initially reviewed by the DO. The AA/BD will approve or decline all changes of ownership and business structure. In addition, OCE will process changes of management. OCE will not process and approve the change of name requests – those actions will be processed by DOs.

2. What Is a Change of Ownership?

A change of ownership is the transfer of any ownership interests in the 8(a) Participant, including transfers resulting from mergers and acquisitions. A Participant does not need to seek prior approval of a change of ownership when the previous owner held less than 10 percent interest in the concern or the change of ownership is a result of the death or incapacitation of a disadvantaged principal. However, SBA must be notified of such changes in accordance with 13 CFR § 124.105(i)(2).

3. What Is a Change of Business Structure?

A change of business structure is a change in the legal identity of a Participant, *e.g.*, a change from a sole proprietorship to a corporation.

4. What Is a Change of Management?

A change of management is a change in one or more individuals holding the position of officer, director or day-to-day manager of the Participant, *e.g.*, Joe Smith, a new employee, will become the vice president of the firm.

5. What Is a Change of Name?

A change of name is a change in the name of a Participant, *e.g.*, a change from Alpha Bravo Charlie Wax, Inc. to ABC Wax, Inc. There is no ownership, management or structure change.

6. What Documents Must be Submitted by the Participant in Support of a Request for a Change of Ownership?

- a. The Participant Firm must submit the following:
- (1) SBA Form 1010.
 - (2) A brief written explanation of why the change of ownership is being proposed and why the change is necessary.
 - (3) Stock Purchase Agreement, if applicable;
 - (4) Buy/Sell Agreement, if applicable;
 - (5) An explanation of the derivation of the purchase price identified in the purchase/sale agreement and copies of any documentation outlining the calculation of the purchase price (i.e. business valuation, asset list and valuation, appraisal, etc.).
 - (6) For corporations, a draft copy of the stock ledger reflecting the proposed issuance of this stock. However, the stock certificates should not be signed until the change of ownership is approved by SBA. For changes of corporate ownership that have already been executed, the Participant must submit a copy of the stock ledger reflecting the issuance of this stock.
 - (7) If the Participant is owned by a trust or the change of ownership will result in the Participant being majority owned by a trust, the Participant must submit a copy of the trust agreement. The trust agreement must specify whether or not the trust is revocable and identify the grantor(s), trustee(s), and current beneficiary(ies). The agreement should include all schedules and exhibits, including a list of all assets held in trust. A BOS may request a review by OGC of the Trust Agreement.
 - (8) Copies of any other documentation that may affect the final determination. This may include:
 - (9) Proposed amendments to the Articles of Incorporation;
 - (10) Proposed amendments to the Articles of Organization;
 - (11) Proposed amendments to the Bylaws;
 - (12) Proposed amendments to the Operating Agreement;
 - (13) Proposed amendments to the Partnership Agreement;
 - (14) Other pertinent documentation as needed or requested.

- b. New owners must submit the following:
- (1) SBA Form 1010-IND from each new individual acquiring 10 percent or more of the firm.
 - (2) SBA Form 912. Each new individual claiming disadvantage and each new owner of 10 percent or more of the Participant must submit SBA Form 912.
 - (3) FD 258, FBI Applicant Fingerprint Card.
 - (4) Any individual who indicates an arrest record or a criminal history on the SBA Form 912 must submit FD 258;
 - (5) The DO will forward the SBA Form 912 and completed FD 258 to the OIG, Investigations Division, and Office of Security Operations;
 - (6) The OIG will then forward FD 258 to the FBI for review. Upon receipt of the individual's record of criminal history from the OIG, the DO must immediately compare it to SBA Form 912 to ensure that the individual disclosed his or her complete criminal record;
 - (7) If the OIG's report contains arrests and/or convictions not disclosed by the individual, the DO must contact the individual and provide him or her with the opportunity to explain the reason for failing to disclose such arrests and/or convictions;
 - (8) The DO must also obtain from the individual any details not contained on the individual's record of criminal history received from the OIG, such as fines paid, jail time, probation served and court disposition papers. The DO does not send the change request until OIG clearance is obtained.
 - (9) Outstanding Tax Liability, Tax Lien, Judgment or Lawsuit. If any documentation submitted to the SBA by an individual reflects a Federal Tax liability, the taxpayer must provide SBA with copies of the cancelled checks that reflect full payment of the obligation or a copy of a repayment plan that has been accepted by the IRS, along with evidence that all payments under the plan are current.
 - (10) If the SBA Form 1010-IND discloses a tax lien, the individual must provide SBA with copies of the cancelled checks that reflect full payment of the obligation or a copy of a repayment plan that has been accepted by the IRS, along with evidence that all payments under the plan are current.

- c. **Outstanding Judgments or Pending Lawsuits.** If the new owner has outstanding judgments or pending lawsuits, he/she must submit documentation verifying satisfaction of the judgment and documentation showing the current status of the lawsuits (such as a copy of the most recent court filing). New individuals claiming disadvantaged status must submit the following:
- (1) **SBA Form 413.** Each new individual now claiming disadvantage and his/her spouse must submit a current SBA Form 413 and all supporting source documents for the figures presented.
 - (2) **Proof of US Citizenship.** If a new individual claiming disadvantaged status is a foreign-born national, evidence of US citizenship such as a US passport or naturalization papers is required.
 - (3) **Transmutation Agreement.** A notarized transmutation agreement, if applicable, if the new disadvantaged individual is married and resides in a community property state or territory.
 - (4) **Tax Returns.** Each new individual now claiming disadvantage must submit personal federal income tax returns, for the most recent three years, including but not limited to the following W-2 forms, schedules, attachments, and proof of tax paid.
 - (5) **Resumes.** Each new individual claiming disadvantage must submit a resume that lists, in chronological order, the individual's education, technical training, and business and employment experience with the employer's name, dates of employment, type of work, position held and duties/responsibilities for each position.
- d. **Preponderance of Evidence.** If the new individual claiming disadvantaged status is not a member of a group presumed by SBA be socially disadvantaged, the individual must provide a narrative statement of social disadvantage. The statement must demonstrate social disadvantage by a preponderance of evidence.

7. What Documents Must be Submitted by the Participant in Support of a Request for a Change of Business Structure?

- a. SBA Form 1010;
- b. Copy of Participant's article of conversion; and
- c. All other governing documentation.

8. What Documents Must Be Submitted by the Participant in Support of a Request for a Change of Management?

- a. Resumes from each new individual claiming disadvantage, new officer, new director, new general or managing partner, and new management member. The resume must list, in chronological order, the individual's education, technical training, and business and employment experience with the employer's name, dates of employment, type of work, position held and duties/responsibilities for each position.
- b. SBA Form 912. Each new individual claiming disadvantage, new officer, new director, new general or managing partner, new management member, new key employee and new owner of 10 percent or more of the Participant must submit SBA Form 912. A "key employee" includes, but is not limited to, an employee who has significant decision making authority and/or management authority
- c. FD 258, FBI Applicant Fingerprint Card.
 - (1) Any new individual who indicates an arrest record or a criminal history on SBA Form 912 must submit FD 258.
 - (2) The OCE BOS will forward the SBA Form 912 and completed FD 258 to the OIG, Investigations Division, and Office of Security Operations.
 - (3) The OIG will then forward FD 258 to the FBI for review. Upon receipt of the individual's record of criminal history from the OIG, the OCE BOS must immediately compare it to SBA Form 912 to ensure that the individual disclosed his or her complete criminal record.
 - (4) If the OIG's report contains arrests and/or convictions not disclosed by the individual, the OCE BOS must contact the individual and provide him or her with the opportunity to explain the reason for failing to disclose such arrests and/or convictions.
 - (5) The OCE BOS must also obtain from the individual any details not contained on the individual's record of criminal history received from the OIG, such as fines paid, jail time, probation served and court disposition papers. The OCE BOS does not send the change request until OIG clearance is obtained.
- d. Documentation evidencing the election of the new officer, new director, new general or managing partner, new management member, etc.

9. What Documents Must Be Submitted by the Participant in Support of a Request for a Change of Name?

- a. Current version of the Articles of Incorporation, as applicable;
- b. Current version of the Articles of Organization, as applicable;
- c. Current version of the Bylaws, as applicable;
- d. Current version of the Operating Agreement, as applicable;
- e. Current version of the Partnership Agreement, as applicable; and
- f. Abandonment of Fictitious Business Name Statement to verify dissolution of sole proprietorship or partnership, if applicable. Articles of Dissolution, Articles of Termination, Articles of Conversion, if applicable.

10. What Must the DO BOS Analysis of the Proposed Change of Ownership or Business Structure or Management Contain?

- a. The DO's BOS Analysis of a Proposed Change of Ownership must contain the following:
 - (1) A summary of the ownership and control of the Participant prior to the proposed change including a list of owners and percentage of ownership and a list of officers, directors, partners, LLC members, and/or managers.
 - (2) A summary of the intended ownership and control of the Participant after the proposed change including a list of owners and percentage of ownership and a list of officers, directors, partners, LLC members, and/or managers.
 - (3) A written assessment of the terms and conditions of the sale indicating whether the individual or firm paid fair market consideration to render it an arm's length transaction.
 - (4) An analysis of the Participant's compliance with 13 CFR §§ 124.103 and 124.104 (social and economic disadvantage) if the change is effected.
 - (5) An analysis of whether the disadvantaged owner's ability to overcome any supermajority voting provisions will be adversely affected by the transaction.
 - (6) An explanation as to whether or not the change of ownership has already occurred prior to SBA's approval.

- (7) A conclusion as to whether the participant will remain eligible if the change is completed.
 - (8) NOTE: If the proposed change of ownership would result in the disadvantaged individual(s) owning less than 51 percent of the Participant (except where the proposal would substitute one or more individuals claiming disadvantaged status for an individual already determined by the SBA to be disadvantaged), the BOS must analyze the change of ownership in connection with the termination for convenience/waiver provisions of 13 CFR § 124.515.
- b. The BOS analysis of the Change of Business Structure must contain the following:
- (1) A summary of the business structure of the Participant prior to the proposed change.
 - (2) A summary of the intended business structure of the Participant after the proposed change.
 - (3) An explanation as to whether or not the change of business structure has already occurred prior to SBA's approval.
 - (4) A conclusion as to whether the Participant will remain eligible if the change is completed.

11. Who Reviews a Proposed Change of Ownership or Business Structure or Management?

- a. The DO BOS prepares an analysis of the change and makes a recommendation as detailed above.
- b. The District Counsel reviews the analysis. The review must include:
 - (1) An analysis of how the Participant's eligibility may be affected by the change of ownership or business structure;
 - (2) A statement as to whether the proposed change is permissible under local law.
- c. The LBOS makes a recommendation and submits the package to the DD for review.
- d. The DD reviews the package, makes a recommendation, and forwards the package to OCE for review. OCE reviews the request and adds its recommendation.

- e. At any time in the process, OCE may request further information from the Participant or the DO.
- f. OCE then obtains a legal review from OGC, and forwards the package to the AA/BD for review, determination, and signature.
- g. The AA/BD makes the decision to approve or deny the change and notifies the OCE. The OCE will notify the DO. The DO will notify the Participant of the AA/BD's decision.

12. How Long Does SBA Have to Review (Process) a Change of Ownership or Business Structure Once the Package Has Deemed Complete?

- a. The SBA has 60 calendar days to process a change of ownership or business structure and issue a decision letter to the 8(a) Participant..
- b. This 60 day period includes processing times for the DO, OCE, Office of General Counsel (OGC) and the AA/BD.

13. What Eligibility Standards Apply to Changes of Ownership, Business Structure or Management?

The standards for determining eligibility after a change of ownership, business structure or management are the same as those for initial eligibility, except for the increased economic disadvantage thresholds used for determining continuing eligibility. See Chapter 2.

14. What Is the Process for a Change of Management?

- a. The Participant must notify the DO of a change in management. The AA/BD's approval is not required for a change in management.
- b. The Participant must submit the required documents to the DO as indicated in the paragraph "What Documents Must be Submitted by the Participant in Support of a Request for a Change of Management" of this Chapter.
- c. The DO BOS forwards the change of management documents/package to the OCE.
- d. If the change of management negatively impacts the Participant's continuing eligibility, the OCE BOS will contact the Participant and give the Participant the opportunity to address SBA's concerns. If the Participant does not take corrective actions, then the OCE BOS will draft a Notice of Intent to Terminate.
- e. The OCE BOS forwards the package to the Supervisory BOS for review.

- (1) If there are no issues or concerns with the change of management, the SBOS notifies the DO in writing that no further review is needed.
 - (2) If there are issues or concerns with the change of management that have not been corrected, the SBOS reviews the draft Notice of Intent to Terminate and forwards the package to HQ Counsel for review.
- f. After obtaining HQ Counsel's review, the Supervisory BOS will forward the package to the D/OCE for review and approval.
- (1) If the D/OCE does not concur with the recommendation(s) regarding the change of management and/or draft Notice of Intent to Terminate, the Supervisory BOS notifies the DO in writing that no further review is needed.
 - (2) If the D/OCE concurs with the recommendation(s) regarding the change of management and draft Notice of Intent to Terminate, the OCE BOS sends the Notice of Intent to Terminate to the Participant.
- g. At any time in the process, OCE may request further information from the Participant and may obtain a legal review from HQ Counsel.

15. What Is the Process for a Change of Name?

- a. The Participant must notify the DO of a change in name. The AA/BD's approval is not required for a name change.
- b. The Participant must submit to the DO the required documents as described in the Paragraph 9 – "What Documents Must be Submitted by the Participant in Support of a Request for a Change of Name" of this Chapter.
- c. The DO BOS will review the change of name documents to ensure that the change is that of name alone. For example, a change from ABC to ABC, Inc. may be a change of business structure, not just a change of name.
- d. District Counsel will give an opinion that the change is legally completed.
- e. The DO BOS, with the appropriate approval from the DD or designee, will change all SBA records to reflect the name change.
- f. The DO BOS will advise the Participant to notify the procuring agencies with which the Participant has contracts to execute a name change modification in accordance with the Federal Acquisition Regulation (FAR). *See* FAR 42.1205.

16. Can a Firm Continue Participation in the 8(a) BD Program Subsequent to a Change of Ownership or Business Structure?

- a. A firm may continue to participate in the 8(a) BD program after a change of ownership or business structure if it was required to and has received prior approval from SBA in accordance with 13 CFR § 124.105(i) and this SOP.
- b. The decision to approve or deny a Participant's request for a change of ownership or business structure will be made and communicated to the firm by the AA/BD. The DO BOS will receive a memo from the AA/BD and a copy of the relevant approval or decline letter.
- c. The decision of the AA/BD is the final agency decision.
- d. The AA/BD will issue a decision within 60 days from receipt of a request containing all necessary documentation, or as soon thereafter as possible.
- e. If 60 days lapse without a decision from SBA, the Participant cannot presume that it can complete the change without written approval from SBA.
- f. A decision to deny a request for change of ownership or business structure may be grounds for program termination where the firm proceeds otherwise.

17. What Will Happen If a Participant Does Not Request SBA's Approval of a Change of Ownership or Business Structure and Management Proceeds Without Approval?

- a. SBA will suspend the Participant from program participation pending resolution of the request in either of the following circumstances:
 - (1) Where advance approval is required but a Participant does not request SBA's approval of the change; and
 - (2) Where the Participant requests approval of the change but completes the change prior to receiving SBA's approval.
- b. If the change is ultimately approved, the length of any suspension will be restored to the Participant's program term in the following circumstances:
 - (1) In the case of death or incapacity of the disadvantaged owner; or
 - (2) If the firm requested prior approval and waited at least 60 days for SBA's approval.
- c. Any change of ownership completed without the prior approval of SBA may also be grounds for termination from the 8(a) BD Program. However, suspension under these circumstances does not require the initiation of a

proposed termination. Consult the OCE before initiating a termination action in these circumstances.

18. What Is the Process for Suspending the Participant Pending Resolution of a Request for Change of Ownership or Business Structure?

- a. The DO may initiate the suspension process if a change of ownership and/or business structure has been made without prior SBA approval.
- b. The suspension recommendation will be prepared by the DO BOS with a review by the District Counsel.
- c. Upon concurrence by the LBOS, the suspension package will be submitted to the DD.
- d. If the DD agrees with the recommendation, he or she will approve it, add any relevant comments, and forward the package to the appropriate Continuing Eligibility Branch.
- e. The DO will forward the following information to OCE:
 - (1) Suspension recommendation;
 - (2) A copy of the request for a change of ownership or structure, if available;
 - (3) Evidence that the change of ownership or structure has been completed without prior SBA approval; and
 - (4) If applicable, evidence of the death or incapacity causing the change of ownership.
- f. OCE will review the suspension package, request any necessary additional information from the DO, add its recommendation and any relevant comments, prepare the suspension letter, obtain comments from OGC, and AA/BD.
- g. If the AA/BD agrees that the Participant should be suspended, he or she will sign the Notice of Suspension.
- h. OCE will send the Notice of Suspension to the Participant using a delivery method that tracks delivery and provides return receipt capability and email or fax a copy to the DO.

19. Can a Decision to Suspend For Change of Ownership or Business Structure Be Appealed?

A decision to suspend an 8(a) Participant for failure to obtain prior approval of a change of ownership or business structure may not be appealed. The decision of the AA/BD is final. *See* 13 CFR § 124.305(h)(2).

CHAPTER 8: [THIS CHAPTER RESERVED FOR FUTURE USE]

CHAPTER 9: [THIS CHAPTER RESERVED FOR FUTURE USE]

CHAPTER 10: LEAVING THE 8(a) PROGRAM

1. What Are the Ways a Participant May Leave the 8(a) BD Program?

A Participant may leave the 8(a) BD program in the following ways:

- a. Expiration of the program term established pursuant to 13 CFR §§ 124.2 and 124.112(f);
- b. Voluntary withdrawal or voluntary early graduation;
- c. Graduation pursuant to 13 CFR § 124.302;
- d. Early graduation pursuant to the provisions set forth in 13 CFR §§ 124.302 and 124.304; or
- e. Termination pursuant to the provisions set forth in 13 CFR §§ 124.303 and 124.304.

2. What Happens After a Participant Leaves the Program?

- a. Once a Participant leaves the program for any reason, it is no longer eligible to receive 8(a) BD Program assistance, including the award of contracts under section 8(a) of the Small Business Act, except a competitive 8(a) contract may be awarded to a concern that has completed its program term under the limited conditions enumerated in 13 CFR § 124.507(d).
- b. After leaving the program, the Participant remains obligated to complete previously awarded 8(a) contracts, including any priced options that may be exercised and any modifications within the scope of the contract. SBA will continue to provide contractual assistance on active 8(a) contracts to firms that have exited the program.
- c. SBA will continue to provide contractual assistance on active 8(a) contracts awarded to firms prior to the completion of their program term. Contract assistance includes determining 8(a) eligibility when an agency decides to exercise an option or modify a contract
- d. When Participants with current 8(a) contracts go out of business or when the individuals upon whom eligibility is based cease to own and control the Participant, those 8(a) contracts must be terminated unless the SBA Administrator grants a waiver. *See* 13 CFR § 124.515 and Chapter 4E of this SOP.

3. What Are Graduation and Term Completion?

- a. A Participant receives a program term of nine years from the date of SBA's approval letter certifying the concern's admission to the program.
- b. A firm that has met the targets, objectives, and goals set forth in its business plan at the end of its nine-year term in the 8(a) BD Program will be considered to have graduated from the program. 13 CFR § 124.112(f).
- c. As part of the final annual review performed by SBA but prior to the expiration of a Participant's nine-year program term, SBA will determine if the Participant has substantially achieved the targets, objectives and goals set forth in its business plan and, thus, whether the Participant will be considered to have graduated from the 8(a) BD Program at the expiration of its program term. In determining whether a Participant has substantially achieved the targets, objectives and goals of its business plan and in assessing the overall competitive strength and viability of a Participant, SBA considers the totality of circumstances.
- d. A firm that has not met the targets, objectives, and goals set forth in its business plan at the end of its nine-year term in the 8(a) BD Program will not be considered to have graduated from the program, but rather to have merely completed its program term. 13 CFR § 124.112(f).

4. What Is Voluntary Withdrawal and Voluntary Early Graduation?

- a. A Participant may choose to withdraw from the program voluntarily at any time prior to the expiration of its program term.
- b. A voluntary early graduation can only occur when a firm has met its targets, objectives, and goals in its approved business plan. Please refer to Paragraph 7 – 'What is Graduation and Early Graduation?' of this Chapter.
- c. These exits are voluntary and become effective when the AA/BD signs the Voluntary Withdrawal Agreement after it is executed by the Participant.

5. What Is Likely To Trigger Voluntary Withdrawal?

Events likely to trigger voluntary withdrawal include:

- a. The owner or owners no longer wish to participate in the program; or
- b. The Participant wishes to avoid *in*voluntary termination from the program or *in*voluntary early graduation proceedings.

6. What Is The Procedure for Voluntary Withdrawal?

- a. The DO Business Opportunity Specialist (BOS) forwards a Voluntary Withdrawal Agreement or Voluntary Early Graduation Agreement to a Participant who indicates an interest in voluntarily withdrawing from the 8(a) BD Program.
- b. The disadvantaged individual(s) upon whom eligibility is based must sign the Voluntary Withdrawal Agreement or Voluntary Early Graduation Agreement on behalf of the Participant.
 - (1) The Participant may not make any modifications to the Voluntary Withdrawal Agreement or the Voluntary Early Graduation Agreement without SBA's approval.
- c. The Participant must return the executed agreement to the servicing DO.
- d. Once received, the DO BOS forward the executed agreement, along with any memorandum or explanatory documents from the Participant (package), to the District Counsel for review.
- e. After getting the District Counsel's review, the DO BOS then forwards the package to the ADD/8(a)BD (or equivalent position – e.g., LBOS) and the DD for approval.
- f. The DO updates the 8(a) electronic tracking system and inputs the reasons for Voluntary Withdrawal or Voluntary Early Graduation.
- g. The District Office then forwards the complete package to the OCE who reviews and forwards to the AA/BD for final approval and signature.
- h. The effective date for the Voluntary Withdrawal or Voluntary Early Graduation is the date the Voluntary Withdrawal Agreement or Voluntary Early Graduation Agreement is executed by the AA/BD.
 - (1) NOTE: If a termination action was initiated against the Participant but the firm has not been terminated, the Voluntary Withdrawal or Voluntary Early Graduation may proceed.
 - (2) NOTE: A firm that has been terminated from the 8(a) BD program as a result of a final agency decision may not later execute any voluntary agreement (neither a Voluntary Withdrawal Agreement nor a Voluntary Early Graduation Agreement).

7. What is Graduation and Early Graduation?

- a. Graduation means a Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in its business plan, thereby demonstrating its ability to compete in the marketplace without 8(a) assistance.
- b. Graduation only occurs at the expiration of its program term.
- c. Early Graduation is when a Participant exits the 8(a) BD program **prior to** the expiration of its program term and is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in its business plan, thereby demonstrating its ability to compete in the marketplace without 8(a) assistance.
- d. Participants may early graduate involuntarily (the action is initiated by SBA) or voluntarily (the firm initiates/requests Voluntary Early Graduation).

8. When May SBA Initiate Early Graduation?

Early graduation may occur at any time during program participation. Pursuant to the 13 CFR § 124.302 SBA may initiate early graduation procedures prior to the expiration of the Participant's program term where SBA determines:

- a. The Participant has substantially achieved the targets, objectives and goals set forth in its business plan prior to the expiration of its 9 year program term, thereby demonstrating the ability to compete in the marketplace without program assistance;
- b. One or more disadvantaged owners upon whom the Participant's eligibility is based are no longer economically disadvantaged. *See* 13 CFR § 124.302(a)(2);
- c. There is evidence that excessive funds or other assets have been withdrawn from the Participant, the withdrawals do not adversely affect the Participant's business development and SBA determines that the Participant has demonstrated the ability to compete without assistance under the program. *See* 13 CFR §§ 124.112(d) and 124.302(d); or
- d. The firm exceeds the size standard corresponding to its primary NAICS codes and cannot demonstrate that the majority of its total revenues during the three-year period evolved from one NAICS code to another 13 CFR §§ 124.102(a)(2) and 124.112(e).

9. What Are Excessive Withdrawals?

- a. Any concern that fails to meet the eligibility requirements for 8(a) BD Program participation after being admitted to the program will be subject to termination or early graduation. 13 C.F.R. § 124.112(a). If SBA determines that withdrawals from the Participant are excessive SBA may propose termination, early graduation, or require some action on the part of the Participant as a condition of maintaining program eligibility.
- b. The term “withdrawal” is defined in SBA’s regulations at 13 C.F.R. § 124.112(d)(1).
- c. Excessive withdrawals, triggering termination, are defined in SBA’s regulations at 13 C.F.R. § 124.112(d)(2)(i).
- d. Excessive withdrawals, triggering early graduation, are defined in SBA’s regulations at 13 C.F.R. § 124.112(d)(2)(ii).

10. What Amount of Withdrawals is Considered Excessive for the Purpose of Early Graduation?

- a. Withdrawals are excessive if in the aggregate during any fiscal year of the Participant they exceed (i) \$250,000 for firms with sales up to \$1,000,000; (ii) \$300,000 for firms with sales between \$1,000,000 and \$2,000,000; and (iii) \$400,000 for firms with sales exceeding \$2,000,000. 13 CFR § 124.112(d)(3)
- b. Graduation actions based on excessive withdrawals consider whether the funds or other assets that have been withdrawn from the Participant leads SBA to determine that the Participant has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD Program. 13 CFR § 124.302(c).
- c. SBA’s determination is based on the totality of circumstances and includes an analysis of the Participant’s annual revenues compared to the amount of the withdrawal, financial strength of the Participant, and the economic disadvantage of the individual(s) upon whom eligibility is based.
- d. SBA also determines whether funds or assets have been excessively withdrawn from the Participant for the personal benefit of one or more owners or managers, or any person or entity affiliated with such owners or managers.
- e. A recommendation for termination rather than early graduation may be made whenever SBA determines that excessive funds or other assets have been

withdrawn from the Participant and the withdrawal is a detriment to the achievement of the targets, objectives, and goals contained in the Participant's business plan. The DO may consult with the OCE for guidance before proceeding.

11. Who May Initiate an Early Graduation or Termination Action?

- a. The DO and/or OCE may initiate an early graduation or termination action by recommending early graduation or termination to the D/OCE.
- b. The D/OCE is responsible for the final recommendation of early graduation or termination to the AA/BD.

12. What is the Procedure for an Early Graduation Action?

- a. The DO compiles all relevant documents and prepares a narrative explaining the basis for the recommendation for early graduation.
- b. Once the package with the recommendation is assembled, the DO BOS forwards the package to the District Counsel for a legal sufficiency review of the evidence supporting early graduation.
- c. The LBOS (or equivalent), and the DD must review the recommendation before submission to the D/OCE
 - (1) If LBOS and DD do not approve, the process stops.
 - (2) If LBOS and DD agree with the recommendation, they append their approval and any comments
- d. The DO BOS, through the LBOS or equivalent, forwards the early graduation recommendation package with the relevant documentation to the OCE for review.
 - (1) The DO updates the 8(a) electronic tracking system and inputs the reasons for Early Graduation.
 - (2) Once the early graduation package has been submitted to the OCE, the DO and/or OCE may cancel the early graduation action. If SBA receives additional information from the Participant and determines that the Participant should remain the 8(a) BD program, the DO or OCE can rescind the early graduation request
- e. The OCE reviews the documentation within 30 days of receipt of a complete package from the DO.

- f. The OCE BOS reviews the package, provides his/her analysis and drafts the Letter of Intent to Early Graduate. The OCE BOS forwards the complete file to the SBOS for review.
- g. The SBOS reviews the file and forwards the complete file to HQ counsel for legal sufficiency review.
- h. After getting the file back from HQ counsel, the SBOS forwards the complete package along with counsel's review to the D/OCE for review.
- i. If the D/OCE does not agree that early graduation is appropriate, the OCE will notify the DO and stop the process.
- j. If the D/OCE agrees that early graduation is appropriate, the OCE BOS sends a Letter of Intent to Early Graduate to the Participant
 - (1) The Letter of Intent to Early Graduate must cite the specific reasons for the action and state that the Participant has 30 days from the date it receives the letter to submit a written response to the OCE to justify retention in the program. A Voluntary Early Withdrawal Agreement is also sent to the firm with the Letter of Intent in case the firm wants to voluntarily early graduate.
 - (2) The Letter of Intent to Early Graduate must be sent by a delivery method that tracks delivery and provides return receipt capability.
- k. If the OCE receives a response from the Participant within the 30 day response period, the OCE will forward the Participant's response to the DO for additional comments.
 - (1) The DO has 10 days provide a supplemental opinion to the OCE.
 - (2) The OCE will evaluate the Participant's response and the DO's supplemental opinion within twenty (14) days of its receipt.
- l. If, the OCE determine that **early graduation is not warranted** after receipt of Participant's response, the OCE will notify the DO and the Participant in writing.
- m. If the OCE determines that early graduation **is warranted** after receipt of Participant's response, the OCE will:

- (1) Draft the Notice of Early Graduation setting out the specific facts and reasons for the decision. Please refer to Paragraph 13 - "What Does the Notice of Early Graduation Contain" of this chapter for further guidance.
 - (2) Forward the package, along with the draft Notice of Early Graduation to the D/OCE .
- n. If the D/OCE concurs with the OCE recommendation, he/she will forward the recommendation to the AA/BD for action.
 - o. If the D/OCE does not concur with the recommendation, the OCE will notify the DO and the Participant in writing
 - p. The AA/BD will make a final determination.
 - (1) If the decision is NOT to early graduate the Participant, the OCE will notify the DO and the Participant in writing.
 - (2) If the decision is to early graduate the Participant, the AA/BD will sign and issue the Notice of Early Graduation to the Participant.
 - q. The Notice of Early Graduation must be sent by a delivery method that tracks delivery and provides return receipt capability
 - r. The OCE will send a copy of the Notice of Early Graduation to the DO for record.

13. What Does the Notice of Early Graduation Contain?

- a. The Notice of Early Graduation sets forth the specific facts supporting the decision and the reasons for the decision.
- b. It advises the Participant that it may appeal the decision to SBA's OHA using the procedures set forth in 13 CFR Part 134.
- c. The Notice will reference the reason(s) for early graduation given in the Letter of Intent to Early Graduate.
- d. If the Participant submits a response to the Letter of Intent to Early Graduate, the Notice of Early Graduation must discuss each argument made in the Participant's response.

14. What Is Termination?

- a. Termination is the involuntary removal, for good cause, of a Participant from the 8(a) BD Program before the expiration of its program term.

- b. Examples of good cause are listed in 13 CFR § 124.303. This list is illustrative only. Other bases for termination may exist and may be used by SBA.

15. When Does Failure to Comply with Annual Review Requirements Result in Termination?

- a. Each Participant is required by statute to provide information annually to the SBA. The Annual Review procedures are set forth in Chapter 5 of this SOP. Participants must submit the updated information to SBA within thirty (30) days after the close of each program year. Firms that do not comply with this requirement may be subject to termination. 13 CFR § 124.303(a)(7).
- b. Thirty (30) days prior to the program year end date, the BOS will send by a delivery method that tracks delivery and provides return receipt capability, notice to the Participant that the annual review update must be submitted within 30 days after the end of its program year.
- c. If the BOS has not received the requested information within 30 days after the end of the program year, the BOS will send a second and final notice by a delivery method that tracks delivery and provides return receipt capability to the Participant stating that an incomplete response or no response has been received and a complete response is due within 30 days of receipt of the second notice. If an incomplete response was previously provided, the notice should identify what is missing. The letter will also notify the Participant that no response may result in SBA initiating a termination action.
- d. If the BOS has received no response or an incomplete response as of 31 days after the Participant's receipt of the second a final notice, the BOS may initiate a termination action of the Participant and follow the procedures established in this chapter. NOTE: The BOS should document his/her efforts in communicating and trying to help the Participant before recommending a termination action.

16. What Amount of Withdrawals Is Considered Excessive for the Purpose of Termination?

- a. Termination actions due to excessive withdrawals are based on the transfer of funds or other business assets from the concern for the personal benefit of any of its owners or any person or entity affiliated with the owners that hinder the development of the concern. 13 CFR § 124.303(a)(13).

- b. SBA’s determination is based on the totality of circumstances and includes an analysis of the Participant’s annual revenues compared to the amount of the withdrawal, financial strength of the participant, and the economic disadvantaged of the individual(s) claiming.
- c. NOTE: A recommendation for early graduation rather than termination may be made whenever SBA determines that excessive funds or other assets have been withdrawn from the Participant and the withdrawal demonstrates that the Participant is economically viable and has the ability to compete in the marketplace without assistance under the 8(a) BD Program. See Paragraph 10 – “What Amount of Withdrawals is Considered Excessive for the Purpose of Early Graduation?” of this Chapter.

17. What Is the Procedure for a Termination Action?

- a. The DO BOS compiles all relevant documents, prepares a narrative explaining the basis for the recommendation for termination, and drafts the Letter of Intent to Terminate.
 - (1) The Letter of Intent to Terminate must cite the specific reasons for the action.
 - (2) The Letter of Intent to Terminate must state that the Participant has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination. The DO BOS will include a Voluntary Withdrawal Agreement with the Letter of Intent to Terminate.
 - (3) The Letter of Intent to Terminate must notify the Participant that it has 30 days from the date of receipt of the Letter of Intent to Terminate to respond and provide supplemental information.
- b. The DO BOS forwards the complete package to the District Counsel for a legal sufficiency review of the evidence supporting termination.
- c. The LBOS (or equivalent) and the DD review the DO BOS’s recommendation along with the District Counsel’s review.
 - (1) If the LBOS and DD determine that termination is not warranted, the process stops.
 - (2) If the LBOS and DD determine that termination is warranted, they append their recommendation and any comments

- d. If the LBOS and DD approve, the DO BOS sends a Letter of Intent to Terminate to the Participant.
 - (1) The Letter of Intent to Terminate must be sent by a delivery method that tracks delivery and provides return receipt capability.
 - (2) The DO must update the 8(a) electronic tracking system and input the justification for termination.
- e. If the DO does not receive a response as of 31 days from the Participant's receipt of the Letter of Intent to Terminate, the DO BOS will forward the termination recommendation package to the OCE for review and continued processing. The package will contain the analysis for the termination action, the District Counsel's review, and the LBOS and DD approvals.
- f. If the DO receives the response from the Participant, the DO will review ALL the timely submitted information provided by the Participant within 14 days. If, after considering the response from the Participant to the Letter of Intent to Terminate, the DO determines that all the reasons for decline have been overcome and termination is not warranted, the DO will:
 - (1) Stop the process;
 - (2) Update the 8(a) electronic tracking system; and
 - (3) Provide written notification to the Participant that the termination issues have been resolved and the firm remains an active firm in the DO's 8(a) portfolio.
- g. If, after considering the response from the Participant, the DO determines that termination is warranted, the DO will forward the termination recommendation package to the OCE for review. The package will contain the basis for the termination action, the District Counsel's review, the response from the Participant (if applicable) and the DO's analysis of the firm's response, and a draft Notice of Termination setting out the specific facts and reasons for the decision.
- h. NOTE: The Participant's response will be reviewed by the DO BOS, LBOS, DD and District Counsel. The DO must notify OCE if it receives the Participant's response after forwarding the package to the OCE and before the AA/BD makes his/her final determination. In such a case, the DO must review

the Participant's response and forward the Participant's response along with the DO's analysis of it to the OCE.

- i. If the D/OCE does not agree with the DO's recommendation, OCE will notify the DO, who will in turn notify the Participant in writing that the termination action has halted. The OCE will update the appropriate database.
- j. If the D/OCE concurs with the DO's recommendation to terminate, he/she will forward the matter to the AA/BD for action.
- k. The AA/BD will make a final determination.
 - (1) If the decision is NOT to terminate the Participant, the OCE will notify the DO, who will in turn notify the Participant in writing that the termination action has halted.
 - (2) If the decision is to terminate the Participant, the AA/BD will sign and issue the Notice of Termination to the Participant.
- l. The Notice of Termination must be sent by a delivery method that tracks delivery and provides return receipt capability.
- m. The OCE will send a copy of the Notice of Termination to the DO for the records.
- n. In the case of serious violations, Participants may be referred to the OIG and the Agency Debarring Official.
- o. The DO may enlist the support of the OCE when preparing the recommendation for termination.

18. What Does the Notice of Termination Contain?

- a. The Notice of Termination sets forth the specific facts supporting the decision and the reasons for the decision.
- b. It advises the Participant that it may appeal the decision to SBA's OHA using the procedures located at 13 CFR. Part 134.
- c. The Notice will also discuss any lack of response, or an inadequate response to the Letter of Intent to Terminate, and will review the reason(s) for termination given in the Letter of Intent to Terminate. If a response to the Letter of Intent to Terminate has been submitted, the Notice must discuss each argument made in the response.

19. How Long Does the Participant Have to Appeal the Notice of Early Graduation or Notice of Termination?

The Participant must appeal to OHA within 45 days after it receives the Notice of Early Graduation or Termination. Receipt is determined as of the date of delivery or attempted delivery.

20. How is Additional Information Treated During the 45-Day Appeal Period?

- a. If, after the Notice of Early Graduation or Notice of Termination is issued, the DO receives information during the 45-day appeal period that would support that the continued participation of the Participant, the DO will forward all the additional information received by SBA to the OCE. The OCE will evaluate this information, make a recommendation, and refer the matter to the D/OCE. The D/OCE will then refer the matter to the AA/BD who will make the final decision.
- b. The AA/BD may decide to let the Notice of Early Graduation or the Notice of Termination stand, or may rescind the Notice in writing to the Participant, with a copy to the servicing DO.

21. What is the Effective Date of the Termination or Early Graduation?

- a. If the Notice of Early Graduation or Notice of Termination is appealed, it is effective on the date OHA issues a decision upholding the early graduation or termination.
- b. If either Notice is **not** appealed, the effective date is when the appeal right expires. (45 days after the firm receives the Notice).

22. Does the Participant Continue to Receive Program Support During the Pending Early Graduation or Pending Termination Proceeding?

- a. Yes, unless the Participant is also suspended in conjunction with a termination proceeding. The Participant's program support continues until it is terminated or early graduated.
- b. Program support includes the award of contracts, options, and in-scope modifications.
- c. Following any appeal of a Notice of Termination or Notice of Early Graduation to OHA, the Participant may still receive program support until a decision is made by OHA but only if the Participant is not also suspended.

23. What Is the Effect of Early Graduation or Termination?

- a. After the effective date of early graduation or termination, a Participant is no longer eligible to receive any 8(a) BD Program assistance. However, such concern is obligated to complete previously awarded 8(a) contracts, including any priced options which may be exercised.
- b. When a firm early graduates or is terminated from the 8(a) BD Program, the firm will generally not qualify as an SDB for future procurement actions. If the firm believes that it does qualify as an SDB and seeks to certify itself as an SDB, as part of its SDB certification the firm must identify:
 - (1) That it has been early graduated or terminated;
 - (2) The statutory or regulatory authority that qualifies the firm for SDB status; and
 - (3) Where applicable, the circumstances that have changed since the early graduation or termination or that do not prevent it from qualifying as an SDB.
- c. Where a concern certifies that it qualifies as an SDB by including the above elements, the procuring activity contracting officer may protest the SDB status of the firm to SBA pursuant to 13 CFR §124.1010 where questions regarding the firm's SDB status remain. *See* 13 CFR §§ 124.304(f) and 124.1010.

24. What Is a Suspension?

The AA/BD may suspend a Participant from all 8(a) contract support and all other forms of 8(a) BD Program assistance when he or she determines that suspension is needed to protect the interests of the Federal Government, such as where information showing a clear lack of program eligibility or conduct indicating a lack of business integrity exists, including where the concern or one of its principals submitted false statements to the Federal Government.

25. What Circumstances Justify Suspension of a Participant from 8(a) BD Program Assistance?

- a. Suspension is warranted when the AA/BD has reason to believe that there is potential harm to the Federal government if the firm continues to receive program benefits.

- b. The evidence before the AA/BD at the time of the suspension decision must be sufficient to support the reasonable belief that the interests of the Federal government need to be protected. 13 C.F.R. § 124.305(a) and (d).
- c. A Participant may be suspended at any time after a Letter of Intent to Terminate has been issued.
- d. Circumstances that justify suspension include, but are not limited to the following:
 - (1) The firm is no longer owned by the individual(s) upon whom eligibility was based.
 - (2) The firm is no longer 51 percent owned by disadvantaged individuals.
 - (3) The firm is no longer a viable concern.
 - (4) Conduct indicating a lack of business integrity such as indictment or conviction of the Participant or its principals of a criminal offense;
 - (5) Submission of false information to SBA;
 - (6) Fraudulent conduct of the Participant or its principals including submission of false information in its 8(a) BD Program application;
 - (7) The firm is suspended or debarred under either FAR or OMB non-procurement rule; 2 C.F.R. § 180;
 - (8) A change of ownership and/or control where the change occurred prior to SBA's approval;
 - (9) A disadvantaged individual who is involved in the ownership and/or control of the Participant is called to active military duty by the United States, his or her participation in the firm's management and daily business operations is critical to the firm's continued eligibility, and the Participant elects not to designate a non-disadvantaged individual to control the concern during the call-up period pursuant to 13 CFR §124.106(h).
 - (10) A Participant has a principal place of business located in a Federally declared disaster area and elects to suspend its participation in the 8(a) BD program for a period of up to one year from the date of the disaster declaration to allow the firm to recover from the disaster and take full advantage of the program. A Participant that elects to be suspended may request that the suspension be lifted prior to the end date of the original request.

- (11) Federal appropriations for one or more federal departments or agencies have lapsed, SBA has previously accepted an offer for a sole source 8(a) award on behalf of the Participant, award is pending, and the Participant elects to suspend its participation in the 8(a) BD program during the lapse in federal appropriations. A Participant could not elect a partial suspension of 8(a) BD program benefits. If it elects to be suspended during a lapse in Federal appropriations, the Participant would be ineligible to receive any new 8(a) BD program benefits during the suspension.
 - (12) NOTE: The suspensions under subparagraphs (8), (9), (10) and (11) above are not appealable. In certain circumstances if the suspension is lifted, the length of the suspension will be added to the concern's program term. *See* 13 CFR §§ 124.305(h)(1)-(5).
- e. NOTE: The suspensions under paragraphs d(8) & (9) above are not appealable. In certain circumstances if the suspension is lifted, the length of the suspension will be added to the concern's program term. *See* 13 CFR §§ 124.305(h)(1); (h)(2); (h)(3) and (h)(4).

26. What Is the Effect of a Suspension on Non-8(a) Contracting?

A Suspension from 8(a) BD program participation has no effect on a Participant's eligibility for non-8(a) contracts. However, a debarment or suspension under FAR Subpart 9.4 will disqualify a Participant from receiving all Federal contracts, including 8(a) contracts.

27. What Is the Suspended Participant's Responsibility with Respect to its Current 8(a) Contracts?

The Participant must continue to perform any current 8(a) contracts including options and in-scope modifications, unless the contracts were terminated for default or for the convenience of the Government.

28. Who May Initiate a Suspension?

- a. The DO or HQ BD Offices may request and recommend Suspension of a Participant with its recommendation for initiation of Termination to the D/OCE, through the OCE, or anytime during the termination process.
- b. The OCE, the D/OMTA, and the D/OPR, may also recommend suspension to the, D/OCE and the AA/BD for reasons outside of any termination proceeding,

where there is a reason to believe that there is potential harm to the Federal government if the firm continues to receive program benefits.

- c. The Participant may request a voluntary suspension due to reasons identified in Paragraph 25: “What Circumstances Justify Suspension of a Participant from 8(a) BD Program Assistance”.

29. What Are the Procedures for Suspending a Participant in Conjunction with a Termination?

- a. If initiated by the DO, the DO will prepare a narrative explaining why suspension is necessary to protect the interests of the Government. Complete documentation providing adequate evidence must be included in accordance with 13 C.F.R. § 124.305(d). The request for Suspension requires review by the LBOS and District counsel with approval by the DD.
- b. The request must be sent to the OCE for review by the SBOS and HQ Counsel. The OCE may require that the DO submit clarifying information or additional documentation.
- c. The OCE will draft the Notice of Suspension and, after review and legal sufficiency review by its counsel, forward the package along with the justification for Suspension to the D/OCE for his/her concurrence and forward the final recommendation to the AA/BD.
- d. The AA/BD will make a final decision.
 - (1) If the decision is NOT to suspend the Participant the OCE will notify the DO.
 - (2) If the decision is to suspend the Participant, the AA/BD will sign and issue the Suspension to the Participant.
- e. The Suspension must be sent by a delivery method that tracks delivery and provides return receipt capability.
- f. The OCE will send a copy of the Suspension to the DO for the DO’s records.

30. What Are the Requirements for a Notice of Suspension?

- a. A Notice of Suspension may be issued any time after issuance of a Letter of Intent to Terminate.

- b. The Notice of Suspension must be sent to the Participant's last known address via by a delivery method that tracks delivery and provides return receipt capability.
- c. The Notice of Suspension must contain the information listed in 13 C.F.R. § 124.305(b) including:
 - (1) The basis for the suspension;
 - (2) A statement that the suspension will continue pending the completion of further investigation, a final program termination determination, or some other specified period of time;
 - (3) A statement that awards of competitive and noncompetitive 8(a) contracts, including those which have been "self-marketed" by a Participant, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or an authorized representative to be in the best interest of the Government to do so, and SBA adopts that determination;
 - (4) A statement that the concern is obligated to complete previously awarded section 8(a) contracts;
 - (5) A statement that the suspension is effective nationally throughout SBA;
 - (6) A statement that a request for a hearing on the suspension will be considered by an Administrative Law Judge at OHA, and granted or denied as a matter of the judge's discretion; and
 - (7) A statement that the firm's participation in the program is suspended effective on the date the Notice of Suspension is issued, and that the program term will resume only if the suspension is lifted or the firm is not terminated.

31. What Is the Effective Date of a Suspension and What Is the Effect of the Suspension?

- a. The effective date of the suspension is the date the Notice of Suspension is issued.
- b. Once the Notice of Suspension is issued, a Participant cannot receive any additional 8(a) BD Program assistance, including new 8(a) contract awards, for as long as the Participant is suspended. This includes any procurement requirements that the firm has self-marketed and those that have been accepted

into the 8(a) BD Program on behalf of the suspended Participant. However, the suspended Participant must complete any previously awarded 8(a) contracts.

- c. In certain circumstances where a Participant elects to suspend its participation in the 8(a) BD Program, the Participant must notify SBA in accordance with 13 CFR §§ 124.305(h)(4) or (5) so that SBA can immediately lift the suspension.
- d. In certain circumstances if the suspension is lifted, the length of the suspension will be added to the Participant's program term. *See* 13 CFR §§ 124.305(h)(1)-(5).

32. May a Suspension Be Appealed?

- a. Only those suspension actions initiated after a Letter of Intent to Terminate and based on clear lack of program eligibility may be appealed to OHA.
- b. A Participant may appeal a Notice of Suspension by filing a petition with OHA within 45 days from the date it receives the letter. *See* 13 CFR. Part 134.
- c. A suspension remains in effect pending the decision on appeal.
- d. Those suspensions based on a change of ownership or calls to active duty are not appealable.

33. What Is the Final Decision of the Agency?

If the suspension is appealed in a timely manner, the OHA decision is the final Agency decision. If there is not a timely appeal, the decision of the AA/BD is the final Agency decision.

CHAPTER 11: [THIS CHAPTER RESERVED FOR FUTURE USE]

CHAPTER 12: [THIS CHAPTER RESERVED FOR FUTURE USE]

CHAPTER 13: [THIS CHAPTER RESERVED FOR FUTURE USE]

CHAPTER 14 [THIS CHAPTER RESERVED FOR FUTURE USE]

CHAPTER 15: 7(j) MANAGEMENT AND TECHNICAL ASSISTANCE PROGRAM

1. What Is the 7(j) Management and Technical Assistance Program?

- a. Section 7(j)(1) of the Small Business Act, 15 U.S.C. §636(j)(1), authorizes the Agency to provide management and technical assistance to individuals and businesses eligible under sections 7(a)(11),7(j)(10) and 8(a) of the Small Business Act.
- b. Management and technical assistance includes, but is not limited to, one-on-one consultant services (provided under Technical Direction Letters(TDL) discussed below), training, and specialized services. Specific types of service and method of delivery are driven by the needs of the Agency's clients. Functional areas of assistance frequently include, but are not limited to, strategic and operational planning and management, marketing, business development, and identification and capture of opportunities; accounting, bookkeeping, and financial analysis; contract management and compliance; information technology and systems development; and industry-specific requirements.

2. What Mechanisms Does SBA Use to Provide 7(j) Assistance?

- a. The Agency provides 7(j) assistance through the efforts of third-party for-profit and non-profit service providers. Depending on the types of service to be provided, the Agency enters into grants, cooperative agreements, and contracts with qualified service providers.
- b. Contracts are infrequently used in providing 7(j) assistance. When they are, they are generally awarded for provision of services that are National in scope, and are managed by the OMTA. Therefore, this chapter focuses on procedures for management of grants and cooperative agreements which are more frequently used to provide assistance to the Agency's clients.
- c. Effective provision of assistance to the Agency's clients, and efficient management of grants and cooperative agreements requires close collaboration among the OMTA, Regional Offices, DOs, and clients. On the rare occasions in which District or Regional Office are working with a 7(j) contract, they should consult with the Contracting Officer and Contracting Officer's Representative on a continuous basis.

3. What Are the Differences among Grants, Cooperative Agreements, and Contracts?

- a. The Federal Grants and Cooperative Agreement Act of 1977 provides that a grant or cooperative agreement shall be used in lieu of a contract when "...the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring... property or services for the direct benefit or use of the United States Government...."
- b. A grant should be used when, "...substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."
- c. A cooperative agreement should be used when, "...substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."
- d. Because 7(j) services are provided predominantly under cooperative agreements, significant and substantive engagement among Agency staff, clients, and service providers is expected and critical to ensure that the highest quality service is provided to the Agency's clients.

4. Who Is Responsible for Coordinating and Formulating Policies and Procedures for 7(j) Assistance?

In consultation with the DAA/BD and AA/BD, the D/OMTA is responsible for managing the 7(j) program, including formulation, coordination, and communication of relevant policies and procedures.

5. Who Is Eligible for Services under the 7(j) Program?

To be eligible for 7(j) services, a client must be at least one of the following:

- a. Small Disadvantaged Business; OR
- b. 8(a) Business Development Program Participant; OR
- c. HUBZone Program Participant; OR
- d. Women-Owned Small Businesses, Economically Disadvantaged Women-Owned Small Businesses, Veteran-Owned Small Business concerns, and Service-Disabled Veteran-Owned Small Business Concerns IF they are located

in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals.

6. What Are the Procedures for Obtaining Services From 7(j) Service Providers?

- a. Eligible individuals and firms that are interested in obtaining assistance from 7(j) service providers should contact the DO that services the area in which they are located.
- b. For clients seeking one-on-one counseling or consultant services, assistance provided under TDLs may be appropriate. The BOS or District Technical Point of Contact should consult with the client to collaboratively determine what TDL type service assistance is appropriate to the firm. It is very important that the scope and substance of assistance to be provided be carefully developed to address the client's needs, and to communicate required consultant service needs to the service provider. To facilitate management of TDLs type services, significant and substantive collaboration, communication and coordination between the servicing DO staff, Regional offices, clients, 7(j) service providers and the OMTA is expected and critical to providing the highest quality 7(j) management and technical assistance to Agency clients.
- c. Except for 8(a) certified firms, clients must certify, in writing, which of the 7(j) eligibility criteria they meet. The application and evaluation procedures depend on the particular type of 7(j) assistance requested, and the terms and conditions of the specific grant, cooperative agreement, or contract.

7. What Are 7(j) Competitive Awards?

- a. 7(j) competitive awards are grants and cooperative agreements that are made as a result of competitive processes. These processes involves the Agency's issuance of notices of funding availability, generally called 'Program Solicitation Announcements,' and technical and financial evaluation of proposals submitted by prospective service providers, pursuant to those solicitations.
- b. Program Solicitation Announcements include information on types of assistance needed, and how potential providers may apply, and how submissions will be evaluated. They are synopsisized and published on FedBizOpps and Grants.gov web-sites, and include programmatic requirements, technical evaluation criteria, and instructions for submission. Responses to competitive Program Solicitation Announcements must be submitted electronically via the Grants.gov website.

8. What Is an Unsolicited Proposal?

- a. An unsolicited proposal is a submission to SBA for the purpose of obtaining a cooperative agreement, grant, or contract to provide management and technical assistance.
- b. The Agency considers unsolicited proposals from qualified individuals and public and private entities that represent innovative approaches to provision of management and technical assistance that are consistent with 7(j) authorizing legislation; controlling regulations; Agency policy, goals, and objectives; and client needs. As a matter of policy, the Agency considers unsolicited proposals for funding only after it has considered proposals made in response to competitive Program Solicitation Announcements.
- c. DO staff may obtain guidance from the D/OMTA, or his or her designee. DO staff should be prepared to provide guidance to the interested public on submission and processing of unsolicited proposals for possible funding.

9. To Which SBA Office Should An Unsolicited Proposal Be Sent?

- a. The geographical service area of the proposed effort determines to which SBA office an unsolicited proposal should be submitted.
- b. If the geographical area to be served under the proposed effort is within the jurisdiction of a single SBA DO, the proposal should be submitted to the Director of that Office, via email, conventional mail, or hand delivery.
- c. If the geographical area to be served under the proposed effort falls within the jurisdiction of two or more DOs, or if the geographical area to be served under the proposed effort is nationwide, the unsolicited proposal should be sent to the D/OMTA, located at SBA HQ via email, conventional mail, or hand delivery.

10. How Are Unsolicited Proposals Processed?

- a. Proposals must be submitted, and are reviewed, in accordance with FAR Subpart 15.6. The SBA will assign appropriate staff to review the unsolicited proposals.
- b. If an unsolicited proposal involves an effort to be performed within the jurisdiction of a single DO, the LBOS of that Office, or equivalent thereof, shall ensure review of the proposal in accordance with controlling regulations.
- c. If an unsolicited proposal involves an effort to be performed in the jurisdiction of more than one DO, the D/OMTA shall ensure review of the proposal in

accordance with controlling regulations. In the event that the proposal is funded, the D/OMTA or his or her designee shall serve as the Grant Officer's Technical Representative on the award.

- d. The reviewer shall determine if:
 - (1) The submission can be considered a valid unsolicited proposal as defined in FAR Subpart 15.6; and,
 - (2) The submission contains sufficient technical and budgetary detail for the purpose of evaluation.
- e. The proposal will be returned to the offeror with brief letter of explanation if:
 - (1) It cannot be considered a valid unsolicited proposal, pursuant to FAR Subpart 15.6; or,
 - (2) It is not consistent with 7(j) authorizing legislation, controlling regulations, or Agency policy, goals, and objectives.
- f. The proposal will be returned to the offeror with an offer of further review, if the submission:
 - (1) Can be considered a valid unsolicited proposal as defined in FAR Subpart 15.6; and
 - (2) Is consistent with 7(j) authorizing legislation, controlling regulations, Agency policy, goals, and objectives, based on information at hand; but,
 - (3) Does not contain sufficient technical and budgetary detail for the purpose of evaluation.
 - (4) If the proposal is returned with an offer of further review and the proposer re-submits, the cognizant office shall conduct a review of any materials subsequently submitted for determination of the appropriateness of further processing.
- g. The initial reviewer will forward the proposal, with his or her recommendation, through the DD, to the D/OMTA, via email, conventional mail, or hand delivery, if the proposal:
 - (1) Can be considered a valid unsolicited proposal, pursuant to FAR Subpart 15.6;
 - (2) Contains sufficient technical and budgetary detail for the purpose of evaluation; and,

- (3) Is consistent with 7(j) authorizing legislation, controlling regulations, Agency policy, goals, and objectives.
- h. Upon receipt of the proposal from the cognizant office, the D/OMTA, or his/her designee, shall convene a technical evaluation panel. Based upon the results of this evaluation, the D/OMTA shall forward the proposal, with his or her recommendation and the results of the technical review panel to OGC for review of legal sufficiency and concurrence. If OGC concurs in the recommendation, the D/OMTA, shall forward the proposal and supporting documentation through the DA/BD to the AA/BD for funding approval;
- i. If the AA/BD concurs, he or she shall arrange for the proposal and funding documents to be electronically transmitted to the Office of Grants Management for financial negotiation, and issuance of Notice of Award and Terms and Conditions
- j. If the AA/BD does not concur, he or she shall return the proposal to the D/OMTA. In turn, the D/OMTA, or his or her designee, shall return the proposal to the proposer, with a brief letter of explanation

11. How Is the Grants Officer's Technical Representative Appointed?

- a. The Grant Officer's Technical Representative is nominated by the Director of the cognizant program office, and appointed by the Grants Management Officer.
- b. The D/OMTA shall nominate the Technical Representatives for grants and cooperative agreements that are:
 - (1) Competitively awarded;
 - (2) National in scope; or
 - (3) Fall within the jurisdiction of more than one DO. (In this circumstance, the D/OMTA shall make his or her recommendation in consultation with involved DDs.)
- c. The LBOS, or equivalent thereof, shall nominate the Technical Representative for awards that fall within the jurisdiction of his or her DO. The Assistant DD shall submit this nomination through the DD to the D/OMTA, who will, in turn, transmit the nomination to the Grant Officer.
- d. The Grants Management Officer will notify the Technical Representative in writing of his or her appointment, and will provide him or her with a copy of the Notice of Award and Terms and Conditions

12. What Are the Responsibilities of the Grants Officer's Technical Representative?

- a. The Grant Officer's Technical Representative is responsible for the technical sufficiency of work performed under the 7(j) award. He or she establishes and maintains a file for each award which includes:
 - (1) Grant recipient's technical proposal;
 - (2) Notice of Award and Terms and Conditions;
 - (3) All monitoring reports; and
 - (4) All other relevant correspondence, including emails.
- b. Monitors and evaluates performance of the grant recipient to assure compliance with the technical requirements of the cooperative agreement.
- c. Notifies the grant recipient of deficient performance, recommends means of correcting deficiencies, and advises the grant recipient of the consequences of failure to correct deficiencies and/or improve performance.
- d. At the earliest opportunity, notifies the Grants Management Officer, the D/OMTA, and LBOS (if appropriate) of any deficiencies in performance is unsatisfactory, to assist the Grants Management Officer in protecting the Government's interest.
- e. Reviews and recommends approval or disapproval of financial and other reports requiring approval, notifies the Grants Management Officer if unsatisfactory reports have been rejected, advises the Grants Management Officer as to the appropriateness of payment for services rendered, and recommends termination of award when appropriate.
- f. Provides technical guidance to the awardee/recipient in the administration of the award.
- g. Advises the Grants Management Officer, through D/OMTA, or designee, of any misunderstanding in communication with the awardee/recipient, or of any matter that has the potential to become the basis of a claim against the Government.
- h. Conducts site visits to the grant recipient's facilities, as appropriate, to insure that:
 - (1) Reported performance accurately reflects the actual accomplishment;
 - (2) Changes in financial condition that might impact technical performance or otherwise jeopardize service delivery under the award are identified; and

- (3) The conditions of the award are met, through verification of work performance, number of employees charged to the award, and other expenses charged to the award.
- i. Makes recommendations in all matters involving expenditure of 7(j) award funds to the appropriate official and forwards them for approval by the Grants Management Officer.
- j. At the completion of the project, advises the approving official and the Grants Management Officer whether the:
 - (1) Performance under the award is satisfactory, and has been accepted;
 - (2) Grant recipient has complied with rights in data, patent rights, and royalty clauses contained in the Notice of Award; and
 - (3) Disposition of any equipment supplied or purchased by the Government for the performance of a specific task is in compliance with appropriate Federal guidelines at the conclusion of the project period.
- k. The Technical Representative has no authority to bind the Government or change the contract. The Technical Representative must refrain from any statements that could be interpreted as promises.

13. What Are the Procedures for Extensions, Revisions, and Modifications of 7(j) Contracts, Grants and Cooperative Agreements?

- a. Grant recipients may request, in writing, extensions, revisions, and modifications of cooperative agreements, grants and contracts. Such requests must be submitted in writing to the Grant Officer's Technical Representative.
- b. If the Grant Officer's Technical Representative is in the DO, he or she shall review the request and forward it with a recommendation through the DD, D/OMTA, Deputy Associate Administrator, and AA/BD to the Grants Officer for further processing.
- c. If the Technical Representative is in the OMTA, he or she shall forward it with a recommendation to the D/OMTA, through the Deputy Associate Administrator, and AA/BD to the Grants Officer for further processing.
- d. The Grants Office shall take final action and, if required, issue a revised or amended Notice of Award to the grant recipient with a copy to the Grant Officer's Technical Representative.

14. What Are the Ethical and Other Considerations Governing Recipients, Clients and Subcontractors?

- a. For 7(j) assistance to be fully effective, the integrity of the program must be preserved. Services must be rendered to clients equitably and efficiently. Further, there must be neither a conflict of interest nor an appearance of a conflict of interest in program operations.
- b. Grant recipients and contractors must be held fully responsible for all work performed by their subcontractors.
- c. Ethical violations will be referred to the OIG. *See* SOP 90 22.
- d. The Agency's sole involvement in grant recipients' subcontract arrangements is its written approval, or disapproval, of each subcontractor. Therefore, the Agency will not become involved in any price negotiations or disputes between grant recipients and their subcontractors. Any complaints received from subcontractors will be referred to the grant recipient.

15. How Are Protests Handled?

- a. All protests arising from actions taken in connection with the acquisition, administration, or provision of 7(j) assistance, transmitted by the GAO must be forwarded immediately to OGC for response and legal advice, with a copy to the Grants Management Officer, and the D/OMTA.
- b. All other protests shall be forwarded directly to the Grants Management Officer, with a copy to the D/OMTA, for timely response.

16. What Are the Agency Procedures for Issues Such as Suspension, Termination, and Resolution of Disputes With Regard to Grants and Cooperative Agreements?

- a. Noted deficiencies in a grant recipients performance will be thoroughly documented by the Technical Representative, and immediately reported to the AA/BD, through the Deputy Associate Administrator, D/OMTA, and DD (as appropriate).
- b. Pursuant to Notice of Award, the Grants Officer will take appropriate suspension or termination action upon notification by the AA/BD of deficient performance.
- c. Disputes arising pursuant to 7(j) awards will be resolved in accordance with the disputes resolution procedures of the SBA Grants/Cooperative Agreement

Appeals Committee. These procedures are outlined in each Notice of Award issued by the Office of Grants Management. *See* 2 C.F.R. Part 215.

17. How Are One-on-One Counseling Services under Technical Direction Letters Managed?

- a. The BOS or District Technical Point of Contact should consult with the client to collaboratively determine what TDL assistance is appropriate to the firm. It is very important that the scope and substance of assistance to be provided be carefully developed to address the client's specific needs, and to communicate required consultant service needs to the service provider.
- b. Based on consultation with the client, the servicing BOS or involved District Technical Point of Contact should prepare an initial TDL and forward it to the Regional Technical Point of Contact [The letter format found at Appendix 15-1 should be used]. NOTE: The 'Travel' category cannot exceed 20 percent of the total cost of the submitted TDL and, a single TDL cannot exceed \$25,000.
- c. Upon receipt of the TDL, the Regional Technical Point of Contact should review it, and if he or she:
 - (1) Concur, forward it to the 7(j) cooperative agreement recipient.
 - (2) Does not concur, return it to the BOS or District Technical Point of Contact for revision or modification
- d. Upon receipt from the Regional Technical Point of Contact, the 7(j) cooperative agreement recipient should review the TDL, and if he or she:
 - (1) Concur, provide cost estimates, sign, and return it to the Regional Technical Point of Contact for review and signature.
 - (2) Does not concur, return it to the District Technical Point of Contact or BOS for revision or modification.
- e. Upon receipt of the TDL from the 7(j) grant recipient, if the Regional Technical Point of Contact:
 - (1) Concur, sign, date, and email a PDF of it to the assigned Program Analyst in the OMTA or his or her designee.
 - (2) Does not concur, consult with BOS or District Technical Point of Contact to resolve.
- f. Upon receipt of the TDL from the Regional Technical Point of Contact, the assigned Program Analyst in the OMTA will review it, and if he or she:

- (1) Concurs, approve, sign, date, log, and email a PDF of it to the 7(j) service provider, with copies to the BOS or District Technical Point of Contact and Regional Technical Point of Contact.
 - (2) Does not concur, consult with Regional Technical Point of Contact, BOS or District Technical Point of Contact, as appropriate, to resolve.
- g. Upon receipt, the Regional Technical Point of Contact will add the approved TDL to their Regional Master List and track funds obligated. The BOS or District Technical Point of Contact and Regional Technical Point of Contact may visit SBA's YES Page to view the 7(j) Call Contracts FY 2014 folder under the tab 7(j) TDL Type Services. This spreadsheet will not reflect TDL approvals.
- h. The assigned Program Analyst in the OMTA will maintain files of approved TDLs.

CHAPTER 16: SURPLUS PROPERTY

1. What Is Surplus Property?

If a Federal agency no longer has a need for personal property, it declares the property excess property, and the property is then made available to all other Federal agencies. If no Federal agency claims the excess property within a certain amount of time, it is declared surplus property.

2. Are 8(a) Participants Eligible to Receive Surplus Property?

The Small Business Act provides that eligible 8(a) Participants are qualified to receive Federal surplus property on a priority basis. 15 U.S.C. § 636(j)(13)(F).

3. How Is Surplus Property Transferred to an 8(a) Participant?

Surplus property is transferred to an 8(a) Participant by a State Agency for Surplus Property (SASP).

4. What Is a SASP?

Every state has created a SASP, which is a state agency responsible for distributing surplus property to eligible recipients, monitoring its use, and managing the future return, transfer or disposal of the property, if appropriate.

5. Do 8(a) Participants Receive Any Special Priority From the SASP?

Although the Small Business Act provides that surplus property may be transferred to 8(a) Participants on a priority basis, the SASP is responsible for equitably distributing property among all eligible recipients and does not afford 8(a) Participants a priority.

6. How May Surplus Property Be Used?

Property must be used by the 8(a) Participant during the normal conduct of its business operations, and may not be sold or transferred to any other party, including affiliates, until one year after the concern graduates from the 8(a) BD program. 15 U.S.C. § 636(j)(13)(F).

7. What Surplus Property Is Available?

An 8(a) Participant can find out what surplus property is available by contacting the SASP in the state in which the Participant's principal place of business is located.

8. What Should an 8(a) Participant Do If It Identifies Surplus Property That It Wants?

Once an 8(a) Participant identifies surplus property it wishes to acquire, it should send a letter to the SASP identifying the desired property and specifying how it will use the property. The Participant should also identify its servicing DO. In the letter the 8(a) Participant must certify the following:

- a. That it is eligible to receive surplus property, and that the intended use of the property is consistent with the Participant's business plan;
- b. That it will use the property in the normal conduct of its business operations, and that if it does not, it will be liable for the fair rental value of the property from the date of receipt;
- c. That it will not sell or transfer the property to any other party until one year after it graduates from the 8(a) BD program, unless directed to do so by the SASP or SBA;
- d. That it will, at its own expense, return the property to the SASP or transfer it to another Participant if directed to do so by the SASP or SBA;
- e. That it will return the property to the SASP or follow any other directions given by the SASP with regard to the disposition of the property if it is terminated from the 8(a) BD program;
- f. That, should it breach its agreement not to sell or transfer the property without the written consent of the SASP or SBA prior to one year after graduation, it will be liable to the Federal Government for the established fair market value or the sale price of the property, whichever is greater; and
- g. That it will give SBA and the SASP access to inspect the property and all records pertaining to it.

9. What Will the SASP Do When It Receives the Participant's Letter Requesting Surplus Property?

Once the SASP receives the Participant's letter, it will contact the servicing DO for a written determination that the firm is an eligible 8(a) Participant and that the proposed use of the property is consistent with the Participant's normal business operation and business plan.

10. Who Decides Whether Certain Property Will Be Distributed to a Participant?

The SASP is responsible for distributing property among eligible donees, including 8(a) Participants.

11. Who Decides Whether a Participant Is Eligible for Surplus Property?

The LBOS at the servicing DO is the official responsible for deciding whether a Participant is eligible for surplus property.

12. What Date Is Used for Determining Eligibility?

The proposed date of transfer, as specified by the SASP, is the date used for determining eligibility.

13. What Should the LBOS Do If He or She Receives a Written Communication From a SASP Concerning a Proposed Surplus Property Transfer?

Once the LBOS receives a written communication from a SASP concerning a proposed surplus property transfer, the ADD must:

- a. Determine whether the proposed transferee is an eligible 8(a) Participant. The following Participants are not eligible to receive surplus property:
 - (1) Participants that have been suspended or terminated from the 8(a) BD program, or that are proposed for termination, suspension, or graduation;
 - (2) Participants that are not in compliance with SBA reporting requirements; and
 - (3) Participants who are debarred or suspended under the FAR.
- b. Determine whether the proposed use of the property is consistent with the Participant's normal business operation and business plan. This is accomplished by reviewing the Participant's past business plans and annual reviews. If the LBOS does not have a full understanding of what the property is, what it does, or how it is used, he or she should contact the SASP and the 8(a) Participant for clarification. If it is unclear how the Participant will use the property in the normal conduct of its business operation, then the LBOS should require the participant to submit a written explanation.

14. What Should the LBOS Do If He or She Determines That a Participant Is Not Eligible to Receive Surplus Property?

If the LBOS determines that a Participant is not eligible to receive surplus property, the ADD must send the SASP a letter explaining why the Participant is not eligible, with a copy to the 8(a) Participant.

15. What Should the LBOS Do If He or She Determines That a Participant Is Eligible to Receive Surplus Property?

If the LBOS determines that a Participant is eligible to receive surplus property, he or she must send the SASP a letter indicating the Participant is eligible, with a copy to the 8(a) Participant.

16. What Happens After the Servicing District Office Has Verified That a Participant Is Eligible to Receive the Identified Surplus Property?

Once eligibility is verified, the SASP and Participant must agree on the fair market value of the property at the time of transfer. The SASP must provide SBA with a written record of the transfer, which must include the agreed fair market value. The Participant must execute all SASP transfer documentation, and pay all associated transfer fees or costs.

17. Should Any SBA Official Sign or Execute Any Form or Documentation That Gives SBA Title To or Responsibility For Surplus Property That Is to Be Used By an 8(a) Participant?

Under no circumstances should any SBA official ever sign or execute any document that gives SBA title to or responsibility for surplus property that is to be used by an 8(a) Participant.

18. Who Has Title to Surplus Property That Has Been Transferred to an 8(a) Participant?

Title passes from the SASP to the 8(a) Participant when the Participant executes the applicable SASP documentation and receives possession of the property. However title is conditional, and the 8(a) Participant may not sell, transfer or otherwise dispose of the surplus property until one year after the Participant graduates from the 8(a) BD program, unless directed to do so, in writing, by SBA or the SASP.

19. What Is the Servicing District Office's Role After Property Has Been Transferred?

On at least an annual basis, the servicing DO must review whether the participant is using surplus property in accordance with all of the applicable terms and conditions. This review may include a site visit. In addition, if at any time the servicing DO receives credible information that surplus property is not being used in accordance with the applicable terms and conditions, it must conduct an investigation to determine the validity of the information.

20. What Should the Servicing District Office Do If a Participant No Longer Needs Surplus Property in its Possession?

If a Participant no longer needs surplus property in its possession, the servicing DO should instruct the Participant to immediately contact the SASP for instruction. The servicing DO should not take possession of the property, nor should it assume any responsibility for the property. If the SASP does not request the Participant to return the property, then the Participant may sell, transfer, or otherwise dispose of the property.

21. What Should the Servicing District Office Do If It Finds That Property Is Not Being Used in Accordance With Applicable Terms and Conditions?

If the Servicing DO finds that property is not being used in accordance with applicable terms and conditions, the DO may:

- a. Require that the property be placed in proper use within a specified time;
- b. Require that the property be returned to the SASP, or be transferred to another participant;
- c. Initiate proceedings to recover the fair rental value of the property, if requested by the SASP; and/or
- d. Initiate proceedings to terminate the Participant from the 8(a) BD program.

22. What Should the Servicing District Office Do If a Firm Sells or Disposes of Property in Violation of the Applicable Terms and Conditions?

If a Participant sells or disposes of property in violation of the applicable terms and conditions, the servicing DO must immediately contact the SASP. In addition, it may:

- a. Initiate proceedings to recover the fair market value of the property at the time of transfer, or the sale price, whichever is greater, if requested by the SASP;
- b. Initiate proceedings to terminate the Participant from the 8(a) BD program.
- c. Refer the matter to OIG.

23. What Happens to Any Funds SBA Receives as a Result of the Participant's Misuse or Unauthorized Sale of Surplus Property?

Any funds SBA receives as a result of the Participant's misuse or unauthorized sale of surplus property must be remitted to the United States Treasury as miscellaneous receipts.

Appendix 3A – Steps to Conducting a Site Visit to an 8(a) Participant

Preparation, Before the Visit

Actions, During the Visit

Documentation & Action, After the Visit

REVIEW THE ONLINE TRAINING MODULE – “How to Perform a Site Visit” –

OFO Sharepoint Site -- <http://collab.sba.gov/sites/FieldOps/GC/default.aspx>

For a site visit, you will always be gathering information to

MAKE A DETERMINATION for something –

Location determination

Compliance determination

Eligibility determination

Other regulatory determination

Remember:

You can “stop by” and **visit a Participant at any time** - during normal business hours, of course.

This is a good business development practice for a BOS to “check in” with the owner.

Visiting firms builds a relationship between the BOS and Participant.

Any visit to a firm can raise eligibility issues

If a “red flag” is raised when conducting a visit to an 8(a) Participant, use these **GUIDELINES FOR CONDUCTING a formal SITE VISIT**

What is a Site Visit?

A visit to a Participant firm for the purposes of gathering facts and validating information. A site visit can also help determine how the firm’s location impacts eligibility and compliance with 8(a) BD program regulations.

When to conduct a Site Visit to an 8(a) Participant?

A site visit may be necessary for:

Bona fide office determination

DO determination for apparent successful offeror or nominated Participant, for construction requirements

REMEMBER: This determination must be made PRIOR TO the firm submitting an offer

DO service area determination

Determine a firm’s location to establish which DO services a firm

Eligibility Determination

Determine whether a firm's location impacts eligibility (e.g., size, affiliation, control)

What prompts a Site Visit?

Reasons Such As:

Visit to a firm for another purpose

Circumstances or findings from an annual visit or annual review

Request from another DO

Request from Headquarters

Information received – at any time - affecting firm's eligibility

Any other information deemed important by the BOS

1ST STE P	Prepare GATHER KNOWN & NEEDED INFORMATION	
	<p>Firm name; Name of Owner(s) View the firm's current profile in SAM & DSBS Firm Address & Phone # – for 8(a) Participant NOTE: Check SBA's electronic system, however other profiles – SAM DSBS - should match Lease agreement; proof of property ownership NOTE: <i>OK to</i> Request at visit Google or use another Internet search engine and search the firm's name & search the firm's address Before you leave the office, print the written directions – your GPS might not locate it! Bring printout of firm's requirements/contracts from SBA's electronic system</p>	<p>Find out the firm's NAICS & industry Review the firm's business development file (BUT DO NOT REMOVE THAT FILE FROM THE OFFICE) Get prepared for the type of facility (e.g., office, factory, plant, construction site) Find the Number of employees View SAM & DSBS profile List prepared questions or issues to address Obtain information on potentially co-located firm(s) from its website; SAM & DSBS profiles Note if internet search shows other locations for firm or other businesses at the same location</p>
2ND STE P	During the Site Visit FOLLOW SAFETY GUIDANCE GATHER & COLLECT DOCUMENTS	
	<p>Ultimate Goal of the Visit: Validate that the firm is operating a legitimate business – within regulatory requirements – at the address location the firm provided to the SBA.</p> <p>Guidelines & Things to Observe - on-site: Follow your instincts & Be Safe & Make observations When you called who answered? Were calls forwarded to another location? Assess the firm and its location – inside & outside Ask questions If needed, request and collect documents (<u>see page 6</u>) Make note of the facility (inside and out) Look for evidence of regular use Does the facility appear occupied?</p>	
		<p>Can the facility reasonably hold the number of employees the firm claims it has working at this office? How many employees do you see? How many desks or work stations do you see? In whose office are you meeting with the firm? WHO responds to your questions? Listen for comments that may raise a question about eligibility Is there office equipment and furniture sufficient for use by the number of employees the firm claims to</p>

<p>Ask neighboring businesses if they know the firm Is the facility appropriate for the firm’s type of business? Look for business signage – outside and inside the facility (look for other firms, too) Is the business name displayed? Request a business card from every person with whom you speak Is it a home-based business? Any vehicles with company’s logo?</p>	<p>have? Identify any surplus property and condition of it. Ask to see where firm records (contracts, payroll, etc.) are kept. Review employment agreements Do you see the file cabinets? Ask an employee how many employees work there & how many hours he/she works there Are current copies of business licenses displayed? Is more than one firm present or represented at the location?</p>
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3RD STE P	<p>After the Visit DOCUMENT YOUR FINDINGS – ALWAYS - See attachment for minimum info to include in your written report</p>
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Write your findings; draft a written report for each site visit; place in firm’s file, and upload into SBA’s electronic system.
 Document what you observed; the list of persons with whom you spoke; the address (es) you visited.
 Take action by making a recommendation when the site visit results show the firm’s eligibility is negatively impacted; collect further information & documents from the firm, if needed.

What are the other steps?

Create a folder to save documents collected & file with the firm’s existing file

Add your written findings or report to that folder to keep

NOTE: You never know if *today’s* site visit has findings connected to *next year’s* annual review!

Add copies of any actions taken (i.e., recommendation for eligibility review, early graduation, termination, suspension)

Follow Up and Monitor the firm, if “red flags” were raised

Work closely with OCE to determine the next steps if cause for termination or suspension exists

Act promptly! Once bad actors know SBA is suspicious of them, some make quick fixes (e.g. setting up ‘legitimate’ office right before you arrive). What definitions are important for Site Visits to 8(a) Participant Firms?

Remember: These definitions are NOT the same for HUBZone firms (e.g., “principal office”)

Principal Place of Business – 13 CFR 124.3 - means

“The business location where the individuals who manage the concern's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where the business records are kept are in different locations, SBA will determine the principal place of business for program purposes.”

Regularly Maintains an Office – 13 CFR 124.3- means

“Conducting business activities as an on-going business concern from a fixed location on a daily basis. The best evidence of the regular maintenance of an office is documentation that shows that third parties routinely transact business with a Participant at a location within a particular geographical area. Such evidence includes lease agreements, payroll records, advertisements, bills, correspondence, and evidence that the Participant has complied with all local requirements concerning registering, licensing, or filing with the State or County where the place of business is located. Although a firm would generally be required to have a license to do business in a particular location in order to “regularly maintain an office” there, the firm would not be required to have an additional construction license or other specific type of license in order to regularly maintain an office.” - - **NOTE: Changed definition in new regulation, effective March 14, 2011.**

Bona Fide Place of Business – 13 CFR 124.3 - means

“For purposes of 8(a) construction procurements, means a location where a participant regularly maintains an office that employs at least one full-time individual within the appropriate geographical boundary. The term does not include construction trailers or other temporary construction sites.”

What other resources can assist me with Site Visits to 8(a) Participant Firms?

Chapter 4D of the SOP (80 05 3): Contracts – Construction

Talk with the LBOS about potential “red flags”

Call OCE (CODS or Headquarters) to determine what other documents to collect to support your eligibility recommendation

<u>RED FLAGS</u>			
These examples are from actual site visits conducted by SBA staff			
<p>No evidence of any place to hold the firm’s files or records</p> <p>Pulling up to the address location and there is no signage for the Participant but plenty of signage for other firms</p> <p>Repeated unanswered attempts to reach the firm or the owner – e.g. via returned mail; when calling, the owner is never in the office</p> <p>You ask to review financial records & only the non-disadvantaged individual has them in her office</p>	<p>Meeting in the elaborate office of the non-disadvantaged individual who sits behind a huge desk while the disadvantaged owner sits in a chair on the side of the desk</p> <p>Arriving at firm’s address, noting signage, but after waiting outside the office for ½ hour, no one is there – though firm reports 20 employees. You ask neighboring businesses about the firm & they tell you that no one has been there in some time</p> <p>The owners never arrive but employees are there & no one knows when or if the owners will arrive</p>	<p>Arriving at the office address and it is a FEDEX or UPS Office location; or nothing is there, but an open field</p> <p>Meeting in a rented shared office space with the owner but the employees work elsewhere at another location</p> <p>You see 2 people & count 2 desks where the firm reports 15 employees work. You later find the firm “moved” here to apply for HUBZone certification</p>	<p>Participant shares same location with former Participant; or with a large firm; or with a firm owned by a non-disadvantaged individual, who also happens to be an officer of the Participant</p> <p>You attempt to conduct a bona fide office site visit only to have the non-disadvantaged individual let it slip that he loaned all startup capital to the disadvantaged owner</p> <p>The disadvantaged owner tells you that all meetings are conducted in the non-disadvantaged individual’s office</p>

YOUR SAFETY is PARAMOUNT

Consult DO policy**Before visiting the firm, follow your office's safety guidance****REVIEW THE SAFETY PORTION of the ONLINE TRAINING MODULE:** "How to Perform a Site Visit"OFO Sharepoint Site – <http://collab.sba.gov/sites/FieldOps/GC/default.aspx>**Talk to your DD and LBOS about the office's policy for site visits,**particularly for **UNANNOUNCED** site visits**Learn what you can about the area and site to be visited**

Talk to other staff who might know the area or visited it before

Google it to see if a "street view" or "satellite view" is available

Consider possible hazards for the location & prepare beforehand

Wear proper shoes or clothing for a construction site or manufacturing plant

At a home office, call & ask about pets

Follow Your Instincts (!)

Before entering or after,

if you observe anything that makes you **uncomfortable or unsafe** or YOU observe something leading you to believe that the location is **not a legitimate business location**, then **DO NOT ENTER THE LOCATION**.

Instead, once you return to your office, draft your report – fully explain what you found or discovered –and clearly state your reasons for NOT entering the location. Discuss with the LBOS whether a written follow-up to the firm is needed or other quick action you need to take now!

Documents to Collect

For UNANNOUNCED Site Visits

--Request the documents while on-site--

If you do not get all copies *during* the visit, request the firm submit remaining copies to you

Give the firm a reasonable time period – submit same day or 2 to 3 days after the visit, depending on the document

--Consider whether firm has to request copies from the state, county, attorney, accountant, etc.--

REQUIRED	REQUIRED	HELPFUL	HELPFUL
Copy of lease agreement or property ownership records	Copy of filing with the Secretary of State's Office (e.g., corporate; firm location; occupancy permits)	Proof of physical residence address of one or more full-time employee(s) i.e. W-2	Evidence that third parties conduct business with the firm at the location: i.e. advertisements, correspondence, invoices, etc.
Most recent Copies of telephone bills @ that location; other locations	Copy of Occupational License from City where business is located	Evidence of Insurance, if required by lease	Evidence that the firm has performed work in the area: i.e., copies of contracts, invoices for contracts, purchase orders, etc.
Most recent Copies of utility bills @ that location; other locations	If applicable, Copy of State Contractor's License, Special Licenses, etc.	Copy of first telephone bill	
Copies of registrations with the city and state (e.g., licensing or filings where business is located)	Copy of tax receipts demonstrating that applicable taxes have been paid	Copy of first utility bill	Evidence to support State Withholding Taxes for employee(s)

<p>Resume of key employee(s)</p>	<p>Copy of payroll records for full-time employee(s) @ location visited & physical residence address for the employees</p>		
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Take this List with you, along with the Checklist

Minimum Information for Written Report			
<p>Date of Visit to Firm</p>	<p>Observations of people at the facility (managers, employees, other firms)</p>	<p>Before you entered, note signage displayed, if any.</p>	<p>Provide number of any equipment, work supplies, phones, etc. used by individuals at the location</p>
<p>Purpose of Visit</p>	<p>Number of employees you saw and where they were located & working</p>	<p>Note where you saw signage & what it stated</p>	
<p>Name of Business</p>	<p>How many employees could realistically work at the location visited</p>	<p>State whether it was reasonable that a business in said industry would/could conduct business at that location</p>	<p>Take note of the part of the location/facility where employees are working: (at desks, on the work floor, in a conference room, on the job site)</p>
<p>Address Location(s) Visited</p>	<p>Number of and types of equipment, computers, file cabinets, phones, desks, etc. at the location</p>	<p>Discuss <i>any</i> evidence of affiliation</p>	
<p>List of other firms at this same address</p>			
<p>Description of Facility (inside & out)</p>			

CHECKLIST – 8(a) Site Visits

<p><i>Date of Visit to Firm</i></p>	<p><i>Name of Business</i></p>
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<i>Original Purpose of Visit</i>	<i>Address Location of This Visit Telephone Number</i>
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List Name of All Owners	List Name of Persons with Whom You Spoke On-Site
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Items to Check	Notes, Issues, Concerns
✓	
Before you entered, describe the signage displayed. If none for the firm visited, state that. Describe where you saw signage & what it stated. If possible, take a picture (Use Office Camera; Work Blackberry)	
Describe the Facility (inside & out)	
Count the number of employees you saw and where they were located & working	
Determine how many employees could realistically work at the location visited	
Take note of the relationships between employees (differences in type of office or office location; how owners/managers communicate with other employees)	
Take note of the part of the location/facility where employees are working: (at desks, on the work floor, in a conference room, on the job site)	
Count number and type of any equipment, work supplies, computers, file cabinets, desks, phones, etc. at the location (including any surplus property)	
Take note of the part of the location/facility where employees are working: (at desks, on the work floor, in a conference room, on the job site)	

	State whether it was reasonable that a business in said industry would/could conduct business at that location
	List of other firms at this same address
	Pictures Taken? If so, add to the written file (check District Office policy on camera use; use Blackberry camera)

Check Off all Documents Requested & Date Provided (State whether firm provided copies of the documents ON-SITE; before the visit; or after)

REQUIRED DOCUMENTS TO COLLECT

HELPFUL DOCUMENTS TO COLLECT

Lease
 Telephone & Utility Bills
 Payroll Records
 Tax Receipts
 Registrations, Filings, & Licenses -List them:

Proof of employees residence
 Evidence of Insurance, if required
 Copy of first telephone & first utility bill
 State Withholding Tax Filings
 Evidence that business is conducted here – List Documents:

Names of SBA Staff Conducting the Visit:

SAMPLE REPORTE

CHECKLIST – 8(a) Site Visits

You can use the checklist to draft/type your report or type the report in a separate memo

<i>Date of Visit to Firm</i>	January 1, 2012	<i>Name of Business</i>	Happy New Year Computers Inc.
<i>Original Purpose of Visit</i> Unannounced?	Announced Orientation	<i>Address Location of This Visit</i> Telephone	123 Times Square Way, New York, NY 212-555-1212
List Name of All Owners	Firm has 3 owners: Ryan Sea, 51 percent owner (disadvantaged); Dick Clarse, 24	List Name of Persons with Whom You	Dick Clarse, in his office Paula Dool, Receptionist Neither Ryan Sea nor his spouse were at the firm when I arrived at 11am;

percent (non-disadvantaged); and Jennifer Sea, 25 percent (wife of Ryan & non-disadvantaged)	Spoke, On-Site
Items to Check	Notes, Issues, Concerns
✓	
✓ Before you entered, describe the signage displayed. If none state that. If none for the firm visited, state that. Describe where you saw signage it & what it stated. If possible, take a picture (Use Office Camera; Work Blackberry)	Once I pulled up to office, there were clear signs for the office building. In the lobby and outside the firm's suite, there was signage that had the same logo as the firm's letterhead (that I saw in the application file). I took a picture of the entrance, parking lot, and signage using my Work Blackberry & emailed it to my SBA.gov account. NO ISSUES NOTED HERE
✓ Describe the Facility (inside & out)	The firm's office is one of hundreds located inside a commercial office building. It is a typical multi-level building. NO ISSUES NOTED HERE
✓ Count the number of employees you saw and where they were located & working	The firm's application said the firm had 20 employees. I saw about 50 employees working in typical cubicles (similar to what we have at the DO). Mr. Clarse has an executive style suite and it is the only one I saw, except for another suite right next door, but with a different firm name.
✓ Determine how many employees could realistically work at the location visited	At least 100 employees could work here. I saw a lot of empty cubicles.
✓ Take note of the relationships between employees (differences in type of office or office location; how owners/managers communicate with other employees)	Mr. Clarse's name was on the outside of his office door and his desk. I did not see Mr. Sea or Mrs. Sea at all. I did see a cubicle with their names – they seemed to share one cubicle because their names were posted outside of that one cubicle. The nameplate said CEO next to Mr. Sea's name and President next to Mrs. Sea's name. Mr. Clarse's title – listed on his door and desk plate - said Chief Financial Officer. While I met with Mr. Clarse, several employees came in and

		out of his office to bring him files, etc. and pick them up. The receptionist also came once to let him know of a meeting scheduled. I never saw Mr. Sea or Mrs. Sea. Their shared cubicle was right outside of Mr. Clarse’s door.
✓	Take note of the part of the location/facility where employees are working: (at desks, on the work floor, in a conference room, on the job site)	All employees working at a desk – which makes sense since this an IT firm.
✓	Count number and type of any equipment, work supplies, computers, file cabinets, desks, phones, etc. at the location	I didn’t count the equipment but I saw computers, phones and other office supplies at every cubicle.
✓	State whether it was reasonable that a business in said industry would/could conduct business at that location	Yes, Firm is in IT. No issues here.
✓	List of other firms at this same address	Hundreds of firms in this same building. Too many to list. I took a picture of the lobby directory with my work Blackberry camera. However, right next to Mr. Clarse’s office, was another executive suite with the name of Randy Jackson, New Year IT, LLC.
✓	Pictures Taken? If so, add to the written file (check DO policy on camera use; use Blackberry camera)	Yes, DO camera was checked out to someone else. I used my work Blackberry to take pictures and email them to myself. When I got back to the office, I printed them and attached to this report in the file I created.
✓	Documents Collected?	Yes, Mr. Clarse had not problems providing me a copy of all documents that I asked for and all were located in his office in a file cabinet.

Check Off all Documents Requested & Date Provided (State whether firm provided copies of the documents ON_SITE; before the visit; or after)	
REQUIRED DOCUMENTS TO COLLECT	HELPFUL DOCUMENTS TO COLLECT
Lease	Proof of employees residence
Telephone & Utility Bills	Evidence of Insurance, if required
Payroll Records	Copy of <u>first</u> telephone & <u>first</u> utility bill
Tax Receipts	State Withholding Tax Filings
Registrations, Filings, & Licenses -List them:	Evidence that business is conducted here – List Documents:
<u>Firm provided Occupancy permit & state incorporation documents</u>	<u>Firm provided copy of every 8(a) and non-8(a) contract</u>

Firm provided me copies of every document I asked for – on-site. However, I have serious concerns whether this firm is actually controlled by the disadvantaged individual, Mr. Sea. Clearly, All employees interacted with Mr. Clarse as if he was the only manager of the firm. Further, the disadvantaged 51 percent owner only has a cubicle that he shares with his spouse, and 25 percent owner. When I asked Mr. Clarse when Mr. Sea was expected, he kept telling me that Mr. Sea got caught in traffic but was on the way. After being in the office for an hour, he never arrived. When I left, I asked the receptionist, Ms. Dool, whether Mr. Sea was still coming in. She said that he only comes in once a month to meet with Mr. Clarse & Mr. Jackson (the other firm next door). When I arrived back at my office, I did a CCR search on the firm and person with the suite next to Mr. Clarse and I found that Randy Jackson was 100 percent of New Year IT, LLC and was an 8(a) Participant before. That other firm graduated last year – a few months before this firm applied. Since I'm a new BOS, I met with the Lead BOS and developed a list of questions for the Participant and a written email request for Mr. Sea to produce other documents by COB tomorrow and to respond to my questions. Once received, I will meet with the Lead BOS again because even though the firm operates a legitimate business at the location, there are some serious eligibility issues with control and serious issues about the involvement of the prior 8(a) Participant at this same address. If termination is warranted (and I think it is), I will work with the Lead BOS and call the CODS before I submit the package to DPCE.

Names of SBA Staff Conducting the Visit: Lynn Jo BOS

END

Appendix 15-1 - Sample TDL Letter

[INSERT DATE]

[INSERT TITLE/NAME]

[INSERT 7(J) PROVIDER]

[INSERT ADDRESS]

[INSERT CITY, STATE & ZIP CODE]

Subject: Requirement to provide 7(j) Management and Technical Assistance,

TDL Number – [INSERT OFFICE CODE/2013/01

[INSERT 7(J) CLIENT COMPANY NAME]

[INSERT CONTACT NAME]

[INSERT ADDRESS]

[INSERT CITY, STATE & ZIP CODE]

[INSERT TELEPHONE NUMBER]

[INSERT EMAIL ADDRESS]

Dear [INSERT NAME]:

We request that you provide the following assistance to the subject 7(j) client:

Relevant Report Line Item Numbers (RLINs) applied to this TDL:

[INSERT RELEVANT HOURLY RATES, NUMBER OF HOURS, AND TOTAL HOURLY COSTS FOR RLIN’S REQUESTED, AND TRAVEL]

RLIN	RLIN Description	Hourly Rate	Number of Hours	Total Hourly Costs
0001	Financial Management: Evaluating Capitalization Options			
0002	Business and Strategic Planning			
0003	Forecasting Services			
0004	Accounting System Set Up: Installation and Optimization			
0005	Contracting: Certification and Business Development Strategies			
0006	Technology Assessment & Plan: Opportunity & Gap Analysis and Customized Service Plan			
0007	Social Media/Marketing: Strategies for Getting Started or Optimizing Facebook, LinkedIn, and Twitter			
0008	Specialized Services (Describe) ***			
0009	Travel (Locations):			
TOTAL				

Additional description(s) of Task(s) and services under this TDL:

[INSERT A BRIEF BUT THOROUGH DESCRIPTION]

Estimated Completion Date: [INSERT NUMBER OF DAYS] days after receipt of signed TDL.

Travel:

If the Grantee's proposed solution includes authorized travel:

All travel reimbursable hereunder shall conform to the FAR 31.205-46 as follows.

Costs for transportation, lodging, meals, and incidental expenses. (1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates; actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge. (2) Except as provided in paragraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this paragraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations, prescribed by the General Services Administration.

All travel shall be reimbursed up to the negotiated NOT-TO-EXCEED 20 percent of the total cost of the submitted TDL.

Reporting and Invoicing Requirements:

The Grantee shall submit a monthly report summarizing the assistance and services provided to its client(s) and costs incurred during the monthly reporting period. Grantees shall submit reports with copies of monthly invoices to the GOTR, and will copy the DTPOC and the RTPOC. (Original invoices will be submitted as instructed in the call contract.) Reports must include at a minimum:

The names and contact information for clients assisted;

A summary of the assistance provided to date, by RLIN and client firm, and the methods employed to deliver services; the costs incurred, by RLIN and client firm, during the reporting period and cumulatively;

A summary description of completed TDLs, including an analysis of the expected impact of the services; and

A description of any unresolved or anticipated issues.

Included with its monthly report, the Grantee shall submit a spreadsheet for each TDL to the DTPOC, the RTPOC and the GOTR. At a minimum, the spreadsheets shall include, by RLIN, columns for: (1) the total amount awarded, (2) the amount invoiced to SBA for the month, (3) the cumulative amount invoiced to SBA and (4) the remaining balance. Additionally, the Grantee shall report these data items monthly aggregated for all TDLs and RLINs.

Conditions of this TDL:

Performance of the work under this contract is subject to written technical direction of the Contracting Officer's Technical Point of Contact (TPOC), who has been specifically appointed by the Contracting Officer to issue Technical Direction Letters (TDL).

A TDL under this contract issued by the TPOC is a directive to the grantee that approves approaches or furnishes instructions to the Grantee. Therefore, the grantee shall proceed promptly with the performance of technical direction duly issued by the TPOC.

The TPOC shall ensure that the requirements of this TDL are delivered/completed timely, on budget and of an acceptable quality; i.e. milestones are met, submission of reports, deliverables.

A TDL shall not: (1) change the scope of the contract, any contract clause or a constitute an assignment of additional work outside the contract SOW; (2) constitute a basis for any increase or decrease in the total estimated contract cost, or the time required for contract performance; (3) change any of the expressed terms, conditions, or specifications of the contract; or (4) interfere with the grantee's rights to perform the terms and conditions of the contract. If, in the grantee's opinion, any instruction or direction by the TPOC falls outside of Report Line Items listed on Page 1, the grantee shall not proceed but shall notify the TPOC in writing within 5 working days after receiving it and shall request either an appropriate notification that the instruction or

direction is rescinded in its entirety; or a determination that it is within the scope of the contract, does not constitute a change, and that the Grantee should proceed promptly with its performance of the TDL.

If you have any questions, please contact Debra Kinsey, Program Analyst, OMTA at (202) 205-6550 or email at Debra.Kinsey@sba.gov.

Thank you for your continued participation. We look forward to working with you.

BOS Printed Name: _____

Signature: _____ Date: _____

RTPOC Printed Name: _____

Signature: _____ Date: _____

Grantee Printed Name: _____

Signature: _____ Date: _____

HQ GOTR Printed Name: _____

Signature: _____ Date: _____

